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A
DIGEST
OF
HINDU LAW,

ON
CONTRACTS AND SUCCESSIONS:

WITH A
COMMENTARY

By JAGANNÁTHA TERCAPANCHÁNANA.

Translated from the Original SANSKRIT,

By H. T. COLEBROOKE, ESQUIRE,

JUDGE OF MIRZAPORE, RESIDENT AT THE COURT OF BERAR,
AND MEMBER OF THE SOCIETY INSTITUTED IN BENGAL FOR INQUIRING INTO
THE HISTORY, ANTIQUITIES, THE ARTS, SCIENCES
AND LITERATURE OF ASIA.

IN THREE VOLUMES.

VOL. III.

CALCUTTA,
PRINTED AT THE HONOURABLE COMPANY'S PRESS.

LONDON,
REPRINTED FOR J. DEBRETT, PICCADILLY,
BY WILSON AND CO. ORIENTAL PRESS, WILD COURT.

1801.

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By H. T. COLLEBROOK, ESQ.
JUDGE OF MYSORE, RESIDENT AT THE COURT OF MYSORE,
AND MEMBER OF THE SOCIETY INSTITUTED IN 1802 FOR PROMOTING
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1. The first of the following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education since the first of January, 1880, to the first of January, 1881.

2. The second of the following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education since the first of January, 1881, to the first of January, 1882.

3. The third of the following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education since the first of January, 1882, to the first of January, 1883.

4. The fourth of the following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education since the first of January, 1883, to the first of January, 1884.

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BOOK V.—*On* INHERITANCES.

CHAP. II.

ON THE

DISTRIBUTION

MADE BY A FATHER IN HIS LIFETIME.

AFTER incidentally discussing, in this place, the portion of an eldest son, we proceed to explain the proposed subject of partition made by a father. He may distribute, at his pleasure, immoveable and other property acquired by himself. In the first place, he may reserve for himself as much as he pleases. Next, having given to his first-born a suitable portion, according to law, as a token of greater veneration due to him, let him make an equal partition among all his sons. But if one surpass the rest in piety or the like, a greater share should be allotted to him; or if his conduct be irreverent, a less share: if a *heinous* offence be imputable to one son, such as enmity to his father or the like, no share shall be given to him; for it is recorded in the texts of YÁJNYAWALCYA, VISHNU and HÁRITA (XXVI, XXV, and XXIII), that partition *made* by a father is solely regulated by his pleasure, and that he may reserve a considerable residue, of which the quantity is not limited. The double share, assigned to the father, must be understood as restricted to the patrimony left by the grandfather: yet he may distribute the precious stones, pearls, and the like, left by the grandfire, in the same mode with property acquired by himself; agreeably to the text (Book II, Chap. iv. V. 13.), “ of precious *metals* or stones, “ of

“ of pearls, coral, and other moveables, the father has power to “ give or sell the whole.” Such is the opinion of JÍMÚTAVÁHANA and others. The texts of BAUDHÁYANA (XL) and others suggest equal partition among sons, and a greater share for the eldest. In applying the text of CÁTYÁYANA (XXVII), those of BAUDHÁYANA and the rest must be excepted in the cases stated by RAGHUNANDANA and others, when filial piety, a large family to maintain, inability to earn a livelihood, or other allowable circumstance justifies unequal distribution ; or when disrespect or hatred towards the father, or other *bad quality*, justifies total exclusion. It should not be argued, that the phrase, “ without a sufficient cause,” intends those virtues which constitute the seniority of sons. A father has power to give greater shares to sons who are eminent for piety or the like, though not endowed with such virtues ; for NÁREDA (XXVIII) declares a father to be destitute of such power then only when he is governed by lust, wrath, or the like. But if a malicious father do not call dutiful a son however pious, but born of an unloved wife, and *on the contrary* call him an enemy to his father, what shall be the rule of decision ? Since the father has full power over property acquired by himself ; and since the greater allotment, in right of duty and piety or the like, depends solely on the option of the father ; if he do not give it, who shall compel him ? But if he exclude his son from a share, calling him inimical to his father, he must prove that enmity in the presence of the king, or before a public assembly, and then refuse a share ; exclusion from inheritance, on his own simple assertion, is not valid. But if he wish to allot a greater share to the son of a favourite wife, though not dutiful, calling him pious, on account of his mother, he can only give that greater allotment after proving the fact *asserted*.

A father has dominion over property acquired by himself : should he give no share to any one son *though* guilty of no offence, and give a share to one guilty of offences, who shall punish him ? It cannot be affirmed, that, under the authority of the texts cited from CÁTYÁYANA and BAUDHÁYANA, the king may punish such a father. The law propounds the moral offence committed by a father slighting such precepts, but ordains no fine ; like the giver of gold to an improper object, *thereby committing*

committing an offence, but incurring no civil penalty. When this *seeming difficulty* is proposed, some lawyers reply: Since the son has a title in the father's estate at the very moment of his birth, without any other cause, (for the particle is exclusive in the text of GÓTAMA, "even by birth alone a man may gain ownership;") a father, making an unequal partition, without attending to the rules prescribed in codes of law, and giving away the joint property to any one person, shall be amerced by the king. It should not be argued from the text of DÉVALA above cited (V), that they have no ownership while the father lives. There is no difficulty, if the want of ownership consist in the want of right to aliene *such property* at pleasure: and it is seen, that a son is incapable of aliening *wealth* at pleasure while his father lives, even though he possess *several* property: as in the text quoted in a former book (Book II, Ch. iv. V. 56. and Book III, Chap. i. V. 52. 1.) the phrase, "they have no wealth exclusively their own," must be explained as signifying only that they are incapable of aliening it at pleasure: they are not destitute of ownership in such wealth; for, were it so, it would incidentally prevent religious ceremonies defrayed out of their wealth. Let it not be alleged, that, since the words "what they may gain" occur in that precept*; and since it is necessary to establish ownership, because religious rites could not otherwise be defrayed; therefore it is right to explain the text as signifying want of dependence: but in this case, since religious rites may be accomplished with money furnished by the father, there is no failure in the performance of ceremonies: why then take want of ownership as signifying want of independence? The observation of JÍMÚTAVÁHANA is therefore justified. Since some title must be established, because the texts of law which forbid unequal partition would otherwise be irrelevant, therefore, in this place also, the term "want of ownership" must, from parity of reasoning, signify want of independence. Nor should it be affirmed, that the law merely shews a spiritual offence in making

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making

* These words do not occur in the text cited: I suppose an allusion to the text of NA'REDA (Book III, Ch. i. V. 51), which differs from that of MENU (V. 52. 1. of the same chapter), in substituting the word now quoted, *arjayanti*, they acquire or gain, for *samadbhigachch'banti*, they earn. Or else it is an error purely accidental, after citing a text of MENU, to refer to a similar text of NA'REDA. T.

making unequal partition, as in neglecting a priest who attends in consequence of an invitation to assist at a *śrāddha*: the priest, who attends, has no property in the food provided for that celebration, *though it be immoral to withhold it*. The text of NĀRĒDA (XXVIII) shows, that, if an unequal division be made by a father, it is invalid. If unequal partition be erroneously made by the owner, and his own property be immediately divested by his volition, and property vested in all the sons, or in him who receives the greater portion, what useful consequence could follow from the consideration, that the father had no power to make such a distribution, *which, nevertheless, would remain in force?* Therefore is the title of sons to their father's wealth, even during his life, *admitted*; but not the power of alienating it at pleasure. Accordingly the text *cited in a former book* (Book II, Ch. iv. V. 14.) is pertinent in its literal sense: conceiving, that the consent of the son is presumed in the case of precious stones, pearls, or other things, which have no long duration, being given away by the father, this is propounded in respect of immoveable property; and the practice is such. Nor should it be argued, that a son cannot have property in the estate while the father lives, since it has been established that one property resists another concurrent title, lest property, by occupancy, should arise in respect of a chattel not abandoned by its owner. It is admitted, that thieves and the like have property, by occupancy, even in a chattel which was not abandoned by the owner. Or supposing it true, the difficulty is removed by affirming that one property only resists an incompatible property. The title of three descendants, during the owner's life, is mentioned by BAUDHĀYANA (III), not as producing property *immediately* vested in the son or other heir, but as producing a right which entitles him to alienate it at pleasure, but which takes effect only after the father's property has expired. Thus they resolve the seeming difficulty.

But that is wrong; since there is no authority for establishing such property within *property*; and the law of equal partition (XL) bears a different import. For example; equal partition may be *considered as* preceptive, like the maintenance of the family out of a man's own wealth. Thus the support of a married daughter residing in her father's house (for so the term is explained

plained by VIJNYÁNÉSWARA) is approved by YÁJNYAWALCYA (LXXVII), although she have no title to the estate; and there is no difference, so far as proof of property is concerned, between *the enjoyment of a maintenance* and the receipt of a share. VÁCHESPATI BHATTÁCHÁRYA and others also do not admit the son's vested title in the paternal estate during his father's life.

LXXVII.

YÁJNYAWALCYA:—After assigning a sufficient support to infants, to a married daughter residing in the house of her father, to aged persons, pregnant women, persons afflicted with disease, dandels *yet unmarried*, guests and servants, the husband and wife may enjoy the residue.

On this subject it is said; the verb “divide” (*bhaja*), in the present title, denotes ownership depending on affinity. There is so much difference, as it relates to the thing or the person. Consequently, in answer to the question, ‘what shall be equal?’ which arises on the terms of the text “equal to all,” adducing the verb ‘divide’ or make a partition (*vibhaja*), which is found in a text of scripture “(*vibhajyāt*) let him distribute, &c.” partition (*vibhāga*) must be affirmed to be the subject of *that epithet*: for the phrase, “when the father makes a partition among his sons,” suggests property vested in the sons in right of affinity. Again; in the case of partition by a father, his property being divested by his choosing to make a distribution, and a similar title being vested in all *his sons*, the right of receiving a greater allotment accrues to the eldest, and to those who are eminent for duty and piety or the like, by consent of the rest, in conformity with the law. But if the father make a gift to one son, in the form of a relinquishment, producing the effect of investing another with property, it is valid, like a gift to a stranger, whether the donation consist of immoveable property or the like acquired by himself, or of wealth inherited from the grandfather. However, a father, giving away an immoveable estate, which has descended from the grandfather, without the consent of his

sons, incurs the guilt of a moral offence. Under the text of YÁJNYAWALCYA (XXXIII) should larger portions be assigned by the father's choice to sons eminent for piety or the like, *still* their property originates solely in their affinity. Consequently, in the case of partition by a father, both the volition of one who is undisturbed by disease or passion, and the affinity of the son, contribute to vest property. As for what is said, that, since a title in the estate of the father and grandfather is vested by birth alone, therefore the father is independent in the use of all property except immoveables, *whether he use it* for gifts made through favour, for the support of the family, for relief from distress, or for other purposes either necessary or preceptive; but he is controled by his sons and the rest in respect of immoveable property, whether acquired by himself, or inherited from his own father or other ancestor (Book II, Chap. iv. V. 14. that is wrong: for it would contradict the text of DÉVALA, "they have not ownership, or full dominion, while a faultless father lives" (V).

But if a paternal grandfather make a partition among his grandsons, whose own fathers are deceased, and in that case give more than his equable share to any one grandson, because he is unable to earn a livelihood or the like, what shall ensue? From parity of reasoning, such unequal distribution is valid. In like manner, should any one grandson betray hatred of his father or paternal grandfather, he, but not his brother, shall be excluded from a share. This shall be discussed at large.

The rule of VISHNU expressing, "if a father make a partition with his sons" (XXV), and the scripture intimating partition of heritage in favour of sons, partition among sons alone is found to be mentioned: how then can a distribution be made among grandsons, by a paternal grandfather?

LXXVIII.

YÁJNYAWALCYA:—But to grandsons by different fathers shall be allotted the portions of their respective fathers.

To grandsons, of whom the fathers are different, shall be allotted portions in right of their several fathers: all the grand-
sons

sons succeed to the proper shares of their respective fathers. Consequently, so many shares should be formed as there were sons of the original proprietor, and should be given to their respective sons; and let them take those shares, whether they be uterine brothers or born of different mothers, and whether they live together, or subdivide the shares according to the number of their own brothers respectively: such is the meaning of the text. This rule of adjustment is grounded on positive texts.

The *Mitâcsharâ*.

Should not this text be affirmed to relate to partition after the death of the father, since YÁJNYAWALCYA, having propounded partition among brothers after discussing that which is made by the father, subjoins this text? No; for, immediately after this text, he propounds a rule respecting partition made by a father (XCII): accordingly the text of MENU (XXIX) has a similar import. This text, therefore, being applicable to both, must be considered as relating to both *subjects*: but the text, which will be cited (LXXXIII), concerns only partition made by a father; *since* it is placed immediately after that topick.

LXXIX.

CÁTYÁYANA:—Should a son die before partition, his share shall be allotted to his son, provided he had received no fortune from his grandfather:

2. That son's son shall receive his father's share from his uncle, or from his *uncle's* son; and the same *proportionate* share shall be allotted to all the brothers, according to law:
3. Or, *if that grandson be also dead*, let his son take the share; beyond him, succession stops.

MISRA reads *avibhaçté nijé prété* instead of *avibhaçtē mrîtē putrē*, and expounds the text by supplying the word “brother” (should a brother, *being himself entitled to a share*, die before partition, &c.) “His son” signifies the son of that brother.

“Fortune ;” a portion. What share shall the brother’s son receive ? The legislator replies to that question ; “ his father’s share.” “ His son,” in the subsequent verse (LXXIX 3,) signifies the great grandson of him whose estate is distributed. Hence the estate of the householder shall be divided according to the number of sons. The share, therefore, which is allotted to a son, shall be received by his son or grandson, not by his great grandson ; for beyond the son’s grandson succession stops. This relates to parceners living together.

It is proper in this instance to explain the word “ himself” (*nija*) the person who receives a share of the estate, whether son or brother : else the text could not relate to the case of partition made by a father. It is not his meaning that the text relates not to partition by a father ; nor does the text contain the word “ brother.”

“ Before partition,” or literally “ undivided,” denotes one with whom partition has not been made. May not strangers be proposed as undivided persons ? No ; for the term is used with reference to the right of partition ; as the word *d’hēnu* (sucked) signifies a *milch* cow, and *pancaja* (produced in mud) signifies a lotos ; and the right of partition consists in the relation of the son to the original possessor and the like. Even the son of the daughter of a man who leaves no male issue, and the son of a mother’s sister, are not intended by the term “ undivided,” since they belong to other families. Or, in other instances, the term ‘ coparcenary of undivided persons,’ signifies the joint ownership of the same thing ; but here it bears a literal sense, and strangers are excluded by the subject, namely “ son : ” a son may be truly said to be unseparated from his father.

“ Provided he had received no fortune” (LXXIX 1) : otherwise, if the original proprietor, having made a partition among his sons or grandsons, live reunited with some of his sons, partaking of the same food with them, and if partition be again proposed after a great lapse of time, a share would be due to his grandson, even in this partition, as in the former distribution. If the reading cited in the *Retnācara* be followed (*avibhaṭṭē mrītē putrē*), the legislator, having so far propounded partition by a father, proceeds to the subject of partition among brothers ; ‘ he shall receive his father’s share ; or, should he be dead,

dead, his son shall take that share:’ the text must be so supplied. But CHANDÉSWARA says; ‘If any one of the brothers be living, the son of that brother shall have no share.’

LXXX.

DÉVALA:—As the suspended water-pot matures the *pippala* tree, so a father, a grandfather, and a great grandfather cherish a son from the moment of his birth,

2. With honey, flesh-meat, pot-herbs, milk and milky food; *reflecting*, “he will give us the annual “*śrāddha*, and that which is offered under the “lunar asterism *Maghá*.”

From this text of DÉVALA, JÍMÚTAVÁHANA argues, in the section on Partition among Brothers, that ‘sons and the rest of ‘three persons have an equal title to the succession, because they ‘equally confer benefits on the person from whom they inherit: ‘their title is not successive in the order of proximity, the title of ‘the grandson on failure of a son, and the title of the great ‘grandson on failure of a son’s son. If that be the case, have a ‘grandson and a great grandson, although their own fathers be ‘living, a title to the succession? No; for they do not confer ‘immediate benefits, since they are not entitled to offer the ‘double set of oblations. If one son have left three children, ‘and the other son be living, then, on the supposition of equal ‘benefits conferred, would not the estate be divided into four ‘equal shares? No; since the right of sons is grounded on their ‘birth and relation to their father, their sons can only have a ‘claim to so much as they were themselves entitled to; the ‘three *grandsons* have a right to one half of the estate, and their ‘uncle to the other half.’ To this it may be objected, that, if there be two sons, and one has a grandson whose own father is deceased, why should not that grandson, succeeding to his deceased father, have a title to a share of the *common* estate, although his

his own paternal grandfather be living. Again ; the male issue of a son, who is become a recluse, would have no title to succession. It should not be affirmed, that a great grandson, whose own father is deceased, deriving his title through his own grandfather, can only have a right to the property which accrues to that ancestor, and is debarred by its being vested in his grandfather. There would be no ground of choice (on JÍMÚTA-VÁHANA's supposition) whether property should vest in the son or in the great grandson. In the silence of the law, it would not be possible to establish the superior right of the son.

LXXXI.

DÉVALA :—Partition of heritage among undivided parceners, and a second partition among divided relatives living together *after re-union*, shall extend to the fourth in descent: this is a settled rule.

This text may also relate to partition by a father, in this manner: among undivided parceners, between whom no partition has taken place, and among divided relatives, who have received a distribution, but who are reunited and live together, partition, and *in the last case* a second partition, may be made with the original owner or his issue, as the case may be, as far as the fourth in descent or great grandson of the original owner. “Second” does not relate to partition among undivided parceners; for it is a rule, that an epithet which is liable to objection is superfluous.

LXXXII.

DÉVALA :—So far, *namely as far as the fourth in descent*, relatives are *sapindas*, or *connected by funeral oblations*; beyond him the funeral cake is rescinded: Sages declare partition of inheritable property to be co-ordinate with the gift of funeral cakes.

“ So

“ So far,” as far as the fourth in descent, relatives, or persons sprung from the *same* family, are *sapindas* : for example, one gives the funeral cake, the other three receive the oblation : hence there is a mutual connexion, by the gift and receipt of funeral cakes, between four persons. And this connexion of *sapindas* regards inheritance ; but the connexion of *sapindas*, in respect of impurity by reason of the dead, extends to the seventh in descent, including the ancestors, who partake of the rice wiped off the hand with which the funeral balls were offered*. This shall be discussed in its place ; of what use would be a misplaced disquisition ? “ Beyond him, (beyond the fourth in descent,) the funeral cake is rescinded ;” for there is not, between more distant relatives, the mutual connexion of giving and receiving the funeral balls. We thus expound the text.

“ Sages declare,” &c. ; they declare the succession of inheritable property to be co-ordinate with the gift of funeral cakes. Consequently, he who offers the double set of oblations, and the funeral cake, succeeds to the heritage. But CHANDÉSWARA says, ‘ this text is applicable when, partition not having been made, property, not enjoyed by one coheir, is solely enjoyed by another residing in the same province.’ It should be here remarked, that if a son die after partition, but some property remained in coparcenary, a share of that undivided property must be given to the son of the deceased when a partition of it is made.

LXXXIII.

YÁJNYAWALKYA :—When the father makes an equal partition among his sons, his wives must have equal shares *with them*, if they have received no wealth either from their lord or from his father.

If he make an equal partition among his sons by his own choice, he must give equal shares to such of his wives also as have no male issue.

The *Dīpacalīcā*.

* MENU, Ch. 3. V. 216.

HÉLÁYUDHA says, 'Wives who have no sons are here intended.' And JÍMÚTAVÁHANA also concurs in that opinion.

LXXXIV.

VYÁSA:—But the wives of the father, who have no sons, are declared entitled to equal shares *with the sons of other wives*: and so are all the wives of the paternal grandfather; they are pronounced equal to mothers.

“Of the father;” the sixth case with the active sense: ‘a partition being made’ must be supplied. Consequently, a partition being made by a father, his wives, who have no sons, are declared entitled to equal shares. Such is his (JÍMÚTAVÁHANA’S) opinion; and RAGHUNANDANA and others concur in the same interpretation. It should not be argued, that the construction of the text is, “the wives of the father;” and consequently, when partition is made by sons after his death, the wives of their father, who have no male issue, namely their stepmothers, shall have equal shares; and the text therefore relates to partition made by sons. When partition is made by sons, the law does not allot a share to the stepmother, who has no male issue. Nor should it be argued that this text of VYÁSA is alone an ordinance of sufficient authority. There is no difficulty in referring it to partition by a father. Nor should it be argued that the text of VRĪHASPATI (LXXXV) is an ordinance of that import, both dam and mother (*jananì* and *mātrī*, genitrix et mater) being inserted to evince that both mother and stepmother are meant.

LXXXV.

VRĪHASPATI:—On the death of the father, the mother (*jananì*) has a claim to an equal share with her own sons; *his* mothers (*mātarah*) take the same share; and the *unmarried* daughters each a fourth of a share.

Since

Since the word “mothers,” requiring elucidation (mothers of whom?), might first suggest “son” for the answer, because he is the *most obvious* agent in the sentence (as in the phrase, ‘he, *the son*, behaves with piety towards *his* mother’); yet, as the same sense has already been obtained from the former part of the sentence, “on the death of the father, the mother has a claim, &c.” father, being the subject of the text, occurs for the answer to the question, ‘mothers of whom?’ Consequently, the wives of the paternal grandfather are entitled to equal shares with his grandsons; for this corresponds with the text of VYÁSA (LXXXIV.) Thus, according to JÍMÚTAVÁHANA, RAGHUNANDANA, SRÍ CRĪSHNA TERCÁLANCÁRA and the rest, when partition is made by a father, a share equal to that of a son must be given to the wife who has no son, not to her who has male issue; her son should be considered as alone entitled to *share* in the partition: this, *they think*, agrees with common sense. But, when partition is made by sons, no share need be allotted to the stepmother, who has no male issue; but food and raiment *must be assigned*, for the late owner of the property was bound to support her. HELÁYUDHA and the author of the *Dīpacalīcā* concur in opinion, that, when partition is made by a father, no share shall be allotted to the wife, who has a son; but the author of the *Dīpacalīcā* does not hold, that no share shall be allotted to the stepmother, who has no male issue, when partition is made by sons. CHANDÉSWARA says, ‘when partition is made by sons, a share must be allotted to the step-mother, who has no male issue: the particle “but” (LXXXIV) has the sense of also; consequently the wives who have, and those who have not, sons, are entitled to shares.’ MISRA delivers a similar opinion; and SULAPÁNI also remarks, ‘the wives of the father must receive equal shares,’ from the sons of course.

Since it might coincide with the text of YÁJNYAWALCYA, “the mother of sons making a partition after the death of their father shall also take an equal share,” it might be questioned, whether the term “wives of the father” (LXXXIV) mean the mother of the sons, expressed in the plural number by way of allusion to marriages contracted in various classes. It could not be said, that “mother” in the text of YÁJNYAWALCYA signifies

signifies both natural mother and stepmother. A word cannot be admitted in a primary and secondary sense at the same time; for it is a rule in philology, that a word, uttered but once, conveys but one meaning. Is it not for the purpose of obviating this doubt, that the legislator adds, "who have no sons" (LXXXIV)? And the construction preferred by JÍMÚTAVÁHANA and the rest, which recites, "partition being made by a father," should be alone admitted. If this be alleged, it is denied; for it is a rule, not to deduce from other texts the explanation of a clear precept; and it would be therefore wrong to remove the term "who have no sons" from its natural and near connexion in the sentence, to construe it with the word "wives," *at the same time* separating this from the words "of the father." Again; the last half of the text of VYÁSA must be considered as relating to partition among brothers after the death of the father, since it contains the term "wives of the grandfather." Consequently, the first hemistich relating to partition by a father, and the last hemistich to partition made by sons after the death of the father, the text would be carried out of the due path. Mother, in the phrase "equal to mothers," requiring the son for the person who makes the distribution, and who gives a share to the wife of the grandfather, and his mother's share not being specified in the text, there would be the additional trouble of seeking the following text of another Sage: "the mother shall take an equal share with her sons, after the death of her lord*." Nor is there any thing inconsistent with the text of YÁJNYAWALCYA; for in many instances† the word "mother" is employed in the sense of stepmother. Nor is this construction liable to the objection of a word being used in two senses at the same time; for the word is accepted in one sense only, 'wife of the father,' a secondary sense without abandoning the natural meaning; as in the example, 'preserve the curds from the crows,' *that is, from any animal which might destroy them.* 'SÚLAPÁNI, in the *Dīpacalīcā*, commenting on the text of YÁJNYAWALCYA, cites the text of VYÁSA as bearing the same import. Accordingly, in the text of VRĪHASPATI,

"natural

* See a note at page 16.

† An instance is given, but I do not recall the remainder of the text, without which the quotation cannot be confidently translated. T.

“natural mother” (*jananî*) is used in the singular number, because she, who bore the son, is individual; and since stepmothers may be numerous, the word “mother” (*mātrî*), denoting the stepmother, is used in the plural number (*mātarah*); and there “mother” (*mātrî*) signifies stepmother only, bearing a figurative sense, wherein the natural meaning is abandoned; and the preceding phrase is added, to remove the doubt whether the natural mother be alone entitled to a share, since “mother” (*mātrî*) might signify natural mother only; in the same manner as the term “those who have no sons,” is added in the text of VYĀSA. CHANDÉSWARA, commenting on the text of VRĪHASPATI, says, “natural mother” (*jananî*) here signifies her who has a son; and mothers (*mātarah*), wives of the father. VĀCHESPATI MISRA expounds “on failure of him,” on the death of the father (LXXXV); “natural mother” (*jananî*), she who has a son; “mothers” (*mātarah*), stepmothers who have no male issue: all these shall have equal shares with the sons; and unmarried sisters shall have each a quarter of their brother’s share, to defray the expences of their nuptials. The claim to an equal share with the sons must be considered as a derivative title, arising out of another absolute title, in this mode; whatever would have been their shares had they sons, the same shares shall they receive *if they have no male issue*. Consequently, if a priest have a barren wife of the military class, three shares must be severally allotted to the sons of the *Brāhmenî* wife, but two shares to the *Cshatriyā* wife, and so forth. VISHNU, omitting the word “equal,” and using the word “proportionate,” makes this evident.

LXXXVI.

VISHNU :—Mothers take shares proportionate to the shares of sons, and so do unmarried daughters.

On this JÍMÚTAVĀHANA has remarked, *that mothers take shares in proportion to the shares of sons*: as the shares allotted to sons are four, three, two, and one, in the direct order of the classes, so are the *same* shares also allotted to wives of the *same*

same classes. Else it would have been said, whatever shares are allotted to the sons, the same shall be also allotted to the wives. By the expression ‘the shares allotted are four, three, two, and one, in the direct order of the classes,’ it is intimated, that, as the *Cshatriyá* son of a *Bráhmaṇa* shall take three shares, so shall the *Cshatriyá* wife. However, this text is propounded as applicable to the case of partition by a father. The distribution of four, three, two, and one, shares, will be subsequently discussed.

‘And unmarried daughters take shares proportionate to those of sons:’ such is the construction of the text. Consequently, since it has the same import with the text of *VRĪHASPATI*, they *each* receive the quarter of a share. By saying ‘in proportion to the shares of the sons,’ it is expressed, that a virgin shall receive a fourth of such share as would be allotted to a son of the same class with that from which she sprang.

Again; the annexing of the epithet “childless, or who have no sons,” is considered as groundless by the author of the *Dīpacalīcā*, by *HELĀYUDHA* and others; but that is not affirmed by *VIJNYĀNĒSWARA*, *CHANDĒSWARA*, *VĀCHESPATI MISRA*, and the rest. It is, consequently, their opinion, that when partition is made by a father, even the wife, who has sons, may claim a share. But some think the opinion delivered by the author of the *Dīpacalīcā* consistent with the reason of the law; since the particle “but” in the text of *VYĀSA* is exclusive; therefore, as no share should be given to her, who has male issue, when partition is made by sons, so, from parity of reasoning, *none should be given* when partition is made by the father. It should not be argued, that, according to the opinion of *CHANDĒSWARA* and the rest, the words “after the death of her lord,” in the text quoted by *JĪMŪTAVĀHANA**, and, “if the father be dead” in the text of *CĀTYĀYANA* are unmeaning, since it is directed, that a wife, whether she have, or have not, male issue, shall take an equal share with the sons, whether their father

* Expecting the texts to be cited at large in other places, I had here omitted these imperfect quotations; but I now subjoin them in this note.

Text quoted by *JĪMU'TA'VA'HANA*: The mother shall take an equal share with her sons, after the death of her lord.

CA'TYA'YANA: And the mother shall have an equal share with her sons, if the father be dead. T.

father be living or deceased. If the father be living, greater or less shares are received, through his choice, in proportion to duty or piety, and the like ; but, after his death, equal shares alone are received, without attending to the duty and piety of sons, or the like : and in the case of partition by a father, wives are entitled to equal shares compared with each other ; but in the case of partition made by sons, they are entitled to equal shares with the sons. In this and other circumstances there is much difference. Consequently, the variance of these two opinions consists herein : according to CHANDÉSWARA and the rest, whether partition be made by the father or by his sons, equal shares must be allotted, conformably with the law, to the wives who have no male issue, as well as to those who have sons ; according to JÍMÚTAVÁHANA and the rest, when partition is made by a father, an equal share must be given to the wife who has no male issue ; and when partition is made by sons, to the natural mother of those sons. The question should be examined by the wife.

These must only be allotted, if no female property have been given ; for the remaining hemistich expresses, “if they have received no wealth,” &c. (LXXXIII) : *but* if female property have been given, an equal share completed by including that property must be allotted, in the manner ordained in the following text of YÁJNYAWALCYA.

LXXXVII.

YÁJNYAWALCYA :—To a woman, whose husband marries a second wife, must be given an equal present on that second marriage, *or equal to what the new wife shall receive on her nuptials*, if she had herself received none of the wealth usually given to women ; but if such wealth had been delivered to her, she is held entitled only to a moiety or *part of the gift at the second wedding*.

By one who desires a second marriage, an equal present must be given to satisfy the former wife ; as much as is settled *for the*

new wife, not more nor less. But if she had already received such wealth as is usually given to women, from her husband's family (for the text coincides with the preceding), then a moiety, that is, less, shall be given: the equivalent present shall be completed by including the female property received from her *husband's* family. Since it is a rule, that an exposition of law, affirmed in one case, shall be extended to others, unless some impediment occur; and since it is necessary to satisfy the question, what should be done when female property has been already given? therefore should the same be established in the present case. Moiety (*ardha*), in the masculine gender, signifies part in general, not equal part or exact half, which is signified by the same word in the neuter gender. SRĪ CRĪSHNA TERCÁLANCÁRA says, 'as much should be given to the superseded wife as to the second wife.' But VIJNYÁNÉS-WARA thinks, the word "equal" signifies so much as is expended at the second wedding. Both conceive, that whatever has been promised, which is fit to be given, must be delivered, provided the promise were not made under the influence of lust, wrath, or the like. The gift of less, or of a moiety, is improper; for a text shows, that a promise legally made in words, but not performed in deed, is a debt of conscience in this world and in the next (Book II. Chap. iv. V. 46 and 44.). This should be discussed in the chapter on the Property of Women.

"His wives must have equal shares" (LXXXIII). Equal shares with whom? To this question JĪMÚTAVÁHANA and RAGHUNANDANA reply, 'equal shares with the sons.' For JĪMÚTAVÁHANA observes, 'an equal division being made by the father among his sons, all his wives must have equal shares.' RAGHUNANDANA says, 'the legislator ordains, that, when partition is made by a father, an equal share with the sons shall be allotted to the wife, who has no male issue.' Their meaning is this: the former text (XXVI) presenting this sense, "the father may divide the estate among all his sons in equal shares," or, in other words, give one son an equal share with another son, it is proper in the present instance to assume the construction therefrom, since it readily presents that allusion. In like manner, when partition is made by sons after the death of the father, a complete share must be allotted to a mother, who has

has already received such property as is usually given to women, including in that share such several property; for it is a rule, that an exposition of law, affirmed in one case, shall be extended to others, unless some impediment occur.

Should the father, by his own choice, give equal shares to all his sons, his wives must have equal shares with his sons, if they have received no female property either from their lord or from his father; but if such property have been given, a moiety *or other part* of a share will be ordained (LXXXVII). If he allot an excellent share to the eldest son and so forth, his wives shall not have such excellent shares and the like; but, after setting apart the deducted allotments, they shall receive equal shares together with a deduction, as ordained by APASTAMBA (LXXXVIII). The *Mitáchará*.

But others explain the phrase, "wives must have equal shares," they must have equal shares with each other. If female property have been given to one wife, the others must also have equal presents. Shall equal sums to that which had been already given to one wife, be given to the rest? or shall any additional sum be given to the first, and greater sums to the rest, *for the purpose of equalising their allotments*? The difference depends on the choice of him who makes the distribution of property acquired by himself; and the same will be also established in the case of property inherited from the paternal grandfather. Such is the mode of interpretation approved by CHANDÉSWARA, VÁCHESPATI and the rest. But it should be remarked, that, when no several property has been given to any one wife, then wealth must be given to all the wives, so that their shares be equal.' They conceive, that "equal shares" in this, as in the former text (LXXXIII and XXVI), should be argued to signify equal to each other: but the present text contains a special rule, that shares, equal to each other, shall be allotted, including such wealth as is usually given to women.

The opinion of JÍMÚTAVÁHANA is accurate; for the shares of wives are ordained equal to those of sons; and when partition is made by sons, the share of the mother is shown equal to that of her son. On the other exposition, an honest man finds no certainty what sums ought to be given to the wives.

"From her lord, or from his father," (LXXXIII): this is a

mere instance, comprehending his grandfather, mother and the rest. The meaning is this : when she has received, from any person, wealth, which should *ultimately* have accrued to her husband, that shall be included in completing her allotment ; but if she received it from her own father or other relative, or from the maternal uncle or other *collateral* kinsman of her lord, such wealth shall not be included in her allotment, because it was exclusive of his claims. Such is the method of *interpretation* consistent with common sense. The completion of a share does not follow from this text of YÁJNYAWALCYA ; for he delivers the exception in general terms, “ if they have received no “ wealth,” &c. (LXXXIII) : but it follows from the text, which contains the word moiety (*ardha*) in the masculine gender, and therefore signifying a part in general. Consequently YÁJNYAWALCYA excepts from the delivery of a full share, such wives as had already received female property.

MISRA has explained the use of the word “ when ” in this text (LXXXIII) ; ‘ but when he reserves the greater part of ‘ his fortune, and gives some trifle to his sons, or takes a double ‘ share for himself, the husband must give so much wealth to ‘ his wives out of his own share alone ; accordingly the separate delivery of shares to wives is only ordained when he ‘ makes an equal partition.’ His notion is this : when a father makes an equal partition, his wives must have equal shares ; but when he does not make an equal partition, he need not allot a share to his wife, but shall support her out of the wealth which he reserved for himself ; and equal partition signifies the allotment of equal shares to his sons and himself. This is liable to objection : for three cases have been propounded (XXVI), and the allusion to the last case would alone be relevant. It should not be affirmed, that equal shares allotted to the father and to his sons are intended : for it is declared, that he may reserve the greatest part of what he acquired ; and two shares of the patrimony inherited from the paternal grandfather will be ordained for the father who makes a partition. As for what is said by JÍMÚTAVAHANA, that the *natural* father of a son begotten on an appointed wife shares equally with the son ; that is not contemplated in the text of YÁJNYAWALCYA (LXXXIII). Were it so, there would be an impropriety in abandoning the principal

form of partition suggested by the general designation, to consider the text as propounding the succession of the father of a son begotten on an appointed wife. Consequently the text only signifies, that all the sons have equal shares with each other: the double or single share of the father follows only from the texts of other Sages. If he give so much wealth out of that which he reserved for himself, does he not give a share to his wife? and, in the case where a double share is received, a father who had many wives would be nearly reduced to indigence.

But CHANDÉSWARA observes, ‘ when the father allots equal shares to his sons, his wives also must have equal shares: and this *is true* when the patrimony inherited from the paternal grandfather is divided, and marriages were only contracted with women equal in class; or when property acquired by the father himself is distributed without attention to the duty and piety of the sons and so forth. But when the patrimony inherited from the paternal grandfather is unequally distributed with due attention to the class of wives, or when property acquired by the father himself is unequally divided with attention to the duty and piety of sons and so forth, wives also shall receive unequal shares in right of their class, or in right of duty and piety or the like: and that is nearly, but not rigidly, exact; for, if there be five sons born of the *Brāhmenī* wife, and there be one *Cshatriyā* wife, and, in such a case, if certain sons be unable *to earn a livelihood*, and all the wives be dutiful or all undutiful, or, in the same case, if the latter circumstances be reversed, then common sense shows it proper, *in the one instance*, to allot equal shares to the wife *of the same class*, and to wives *different in class*, while the sons have not equal shares, or, *in the other instance*, to allot unequal shares to the wives, while the sons have equal shares.’

An observation should be here made: if the father divide the estate among his sons in equal shares, (*for, in other words*, if he take one or two shares for himself, and give similar allotments to his sons,) or give greater portions in right of transcendant virtue as the law directs, he must allot one share to each of his wives out of his own ascertained wealth; but if he reserve the greatest part of an estate acquired by himself, he must defray the nuptials of his daughter, and support his wife out of his own wealth,

which he reserved : he ought to retain a sufficient sum for those purposes. Such is the method indicated by VACHESPATI MISRA.

The word ' wife ' (*patnī*) in this gloss [of CHANDESWARA] denotes the eldest wife ; for it is so employed : eldest wife means her who is equal in class. No author has used the term to denote wife in general, *or of any class*. However, since the espousal of a wife unequal in class is prohibited in the *Cali* age, the case does not now occur. I have not mentioned the subject of my own accord ; but every subject which has been treated by Sages and Authors, is briefly discussed in a few places, for the purpose of expounding their texts, and elucidating their works.

Whether the share be equal with that of the son, or with that of another wife, are wives entitled to the use only of the share which they receive, or have they independent power over it ? To this question some lawyers reply : although sons had no previous ownership in their father's estate, yet, as they have independent power *after partition*, since the *father's* property is divested, so wives also have independent power ; for a text declares, that property is common to the husband and wife (CCCCXV), and she therefore had ownership even prior to this partition : and, that being the case, her gift of such property is valid, even without the assent of her lord ; and when she dies, it devolves on her own son alone, not on a son born of another wife. Under the text which ordains the dependence of women (Book IV, v. 5), and that which declares property common to the husband and wife, is not a wife owner of such wealth, and at the same time dependent in respect of it ; and accordingly she has then no power to give or sell her own due share ? It should not be affirmed, that, since partition between husband and wife is not admitted, there cannot be any due share belonging to her. In the case of partition during the life of the father, this text propounds the shares of the husband and of the wife ; and the term ' partition ' denotes several property predicated of one person alone. If it be affirmed, that, since an allotment of wealth to the wife is directed then only when partition is made on account of the sons, and since partition between a childless husband and his wife has not been propounded, she can have no claim to partition ; but, a distribution among sons being undertaken, a maintenance alone is assigned to the wife, from the apprehension,

apprehension, "should all the property be dissipated, where and how could my wives be supported?" And the amount of that alimony is fixed at a sum equal to the share of sons and of other wives: *if this be affirmed*, then surely she has no power to give away, or otherwise aliene, her alimony; her husband is sole master of her and of her wealth, whether residing at the same, or at a different place; and when she dies, the wealth assigned for her support reverts to her husband, or to his heir: her right is now, *after the assignment of alimony*, the same as before, in respect of expending wealth with her lord's consent, or keeping it, and so forth. When this *question and inference* is proposed, *the answer is*, No; for, the dominion of the wife over the whole wealth of her husband being shown by the terms of the text (CCCCXV), and her separate property, unconnected with her husband, being similarly proved after partition, nothing prevents the validity of her gift, *or alienation* of this wealth, any more than *her gift* of her own separate property; and there is no argument to prove that the text of YÁJNYAWALKYA, which propounds partition, intends the assignment of a maintenance. Were it so, why should it not be equally true in respect of sons? Her dependence serves to impede the attainment of religious merit, by the distribution of alms, and by abstinence or the like, undertaken without the assent of her lord; and to prevent her intercourse with other men, and rambling abroad at her pleasure.

Such being the case, would her daughter succeed to such wealth on her death, if she leave no male issue, although a son born of another wife be living? No; for the text (CCCCCLXXVII 2) may relate solely to property received by the wife in right of her connexion *by marriage*, as easily as it may relate to the property of the husband, in which the wife has an interest; since there is no argument, on which one meaning should be selected in preference to the other, and the right of the husband's heirs has been alone propounded. Again; the equal title of her own son, and of one born of another wife, is admitted. It should not be objected, that, such being the case, the succession to female property might accrue to them on the same grounds. In respect of such wealth as is usually given to women, a property is created, originating in gift alone; and, in this case, a property originating in a gift on account of

affinity, and resisting the paramount dominion of the husband, is created, not property derived from affinity alone. Nor should it be argued that the text quoted (CCCCLXXVII 2) concerns only the succession to the estate of one who leaves no son. There is no argument, on which such an interpretation can be established: although it be inserted under the title of Property left by one who has no Son, still that interpretation is opposed by proofs drawn from analogy. Nor should it be objected, that, since the share of a wife is in a manner *gratuitously* given, it ought to be held similar to female property. Being received in right of *the relation of a wife to her husband*, it is justly considered as similar to connected property, *or wealth devolving on heirs in right of affinity*. Since a wife has an interest in the whole of her husband's estate, the father's wife, whether she have, or have not, male issue, is entitled *to an allotment*, when partition among sons is undertaken after the death of her lord. Accordingly CHANDÉSWARA and the rest hold, that shares must be allotted to them: and hence, the text, "after the death of the father and mother, &c." (IV), showing that sons do not completely succeed to the estate while the mother lives, declares them unentitled to *make a partition without her consent*. Were it so, since the husband would not be qualified to make a partition without the assent of his wife, would it not follow that no partition could be then made by a father? No; for the right of the wife, originating in the right of the husband, is subordinate thereto. Accordingly, when the patrimony left by the paternal grandfather is divided, the allotment of a share to the wives of that ancestor is ordained. Modern lawyers hold, that shares must in that case be allotted even to those wives of the paternal grandfather who have no sons. When property left by the paternal great grandfather is divided, should not a share be allotted to his wife? That is admissible from parity of reasoning; and the particle in the phrase, "and wives of the grandfather" (LXXXIV) connects the terms with what is *understood*, but not expressed. As for what is deduced from the law, that no share should be allotted to the wife unless partition be made among sons, it is founded on the independent authority of scripture, *that is, on the letter of the law*; else, according to your opinion, since there is no distinction in their want of ownership, the reason

reason of the law must be shewn for this maxim, 'that partition shall be made on account of the son, not on account of the wife.' Let it not be objected, that the authority of scripture should be acknowledged *as the foundation of civil law* in every case. When the reason of the law is *apparent*, it would be wrong to abandon it. Accordingly YAJNYAWALKYA declares, "if two texts of law differ, reason, *or that which reason best supports*, must in practice prevail." As for what is argued, that, when the husband's property is devested, the property of the wife, originating therein, is also annulled: here are no grounds for this induction; for there is no ordinance to that effect, like the text (CCCCXV), which serves to prove the right of the wife to be co-existent with the husband's; and property is not devested, when the act which created it is past; else, the property of the donee would be annulled so soon as the acts of giving and accepting were past. In like manner, a thing given, at the time of partition, to a wife, a mother, a grandmother, and a great grandmother, cannot be aliened or sold by the husband and the rest; but the gift or other alienation by the wife or owner is valid.

Such is the answer given by some lawyers to the question proposed: and that is not unacknowledged by BHAVADÉVA. He says, 'in fact wives have an interest in their husband's estate, 'under the text which declares property common to husband and wife; and by the authority of texts, if there be a son, a son's son, or a great grandson, since these offer the double and single sets of funeral cakes, a share must be allotted to them, 'as *having equal pretensions* with the mother; but, on failure of them, wives alone succeed to the whole estate: this must be 'admitted by the wife.' Although the mother survive, the son has property in the paternal estate after the demise of his father, of whom the principal right was predicated; and the mother's right, which is subordinate, neither resists nor is resisted by any other. Accordingly, though the first wife have property *in her husband's estate*, another, *subsequently* married, has also property *in the same*. The author of the *Mitácsharā* likewise admits the ownership of the wife in the whole of her husband's estate; and he therefore admits partition with the wife, so that it be made by the choice of her husband, not by her own. He has not said, that a maintenance only shall be assigned to her. However,

ever, he has directed that a deducted allotment shall be also given, as ordained by the text of APASTAMBA.

LXXXVIII.

APASTAMBA :—The furniture, the house, and the ornaments shall be allotted to the wife.

Hence the gift, sale, or other alienation of her own share, by a wife, is valid. However, since women are not independent, that gift is immoral. This opinion is so proved. But to that VÁCHESPATI BHATTÁCHÁRYA does not concede; because the assertion, that a share is given to wives, mothers, and the rest, in right of a property *already vested*, is not accurate. For, were it so, a share of property, inherited from remote ancestors, must be given to the grandfather's grandmother and the rest. Or, even granting that a share must be given to those matrons, if they have not already received any allotment, then, should a childless *Bráhmna* leave a *Vaiśyá* wife, she would also receive a share when partition is made among his uterine kindred, who are alone entitled to the succession: and, were it so, a new practice, not approved by any author, would be introduced. As it is admitted that the natural mother of an only son shall receive no share, since it has not been ordained by the text of any Sage, so it is reasonable that no share should be allotted to a great grandmother. As for what is affirmed, that a wife has a secondary claim on the whole of her husband's estate under the text which declares property common to husband and wife; be it as it may, according to the opinion of those who contend for her several property, still partition is not made in right of that property, but partition between husband and wife must be reconciled like that between father and son. When partition is made among sons, a share is allotted to the mother, for the sake of natural affection, to establish the validity of the son's share, and for the sake of independence: if the share allotted to a wife or mother be consumed in her support, she is entitled to receive alimony from her husband or son; for, at all events, she must be maintained: but if a surplus remain above the consumption, and the husband's wealth be wholly dissipated, he may, by parity of reasoning, resume property from

from his wife, as *he might resume it* from his son. However, the share allotted to a wife and the rest, like that which is given to a son, may be disposed of at their pleasure. Hence, like female property, the gift, sale, or other alienation of that share is valid; for it is equally given her by her husband and the rest. Such is the just rule of decision according to both opinions. However, there is no reasoning which can show it incumbent on great grandsons, and the rest, to allot a share to their great grandmother. Consequently, when partition is made by a father, he must give to such of his wives as have no male issue an equal share with his sons; and when partition is made among sons or grandsons, they must allot to their natural mother or grandmother an equal share with themselves; but if female property have been given to any one wife by a kinsman sprung from the same race with her husband, that shall be included in completing her share. No allotment shall be given to a great grandmother. Such is the opinion of JIMÚTAVAHANA and the rest. But 'SRÍ CRĪSHNA TERCÁLANCÁRA holds, that a share must be also given to the father's stepmother. To establish this opinion, the reason of the law ought to be shown. It cannot be affirmed that the argument may be drawn from the word "all" (LXXXIV), which would otherwise be nugatory. That the word "father" would thus become unmeaning, *or would want precision*, cannot well be disproved. As for what he asserts, that the wife of the grandfather claims a share of the grandfather's estate only, still we perceive no other reasoning by which this maxim can be maintained, except a title founded on her secondary property in the grandfather's estate. That author does not admit the validity of gift, sale, or other alienation by a wife and the rest. This brief exposition may suffice.

CHANDÉSWARA and the rest differ, *contending*, that shares must be allotted to all the wives and the rest, whether they have, or have not, sons. But others hold, that the allotment of shares to wives, as directed by YÁJNYAWALCYA, is not intended for partition between husband and wife; since 'APASTAMBA forbids such a partition.

LXXXIX.

APASTAMBA :—*æ* Partition does not take place between

tween a wife and her lord. β From the *time of* taking her hand in marriage, her aid in *all* acts is required as well as her participation in the pure and impure fruit of *action*, and *her concurrence* in the receipt of wealth: Sages do not deem it a theft, if a gift be made by a wife for a *just* cause, during the *absence* of her husband*.

It relates not to partition between husband and wife, for it would contradict common sense, that, living at different places, upon separate property, they should co-operate in religious rites; and *again*, because *APASTAMBA* shows them to be associated in the acquisition of wealth; and *lastly*, because partition cannot be effected between them, since the wife's claim on property acquired by her husband after partition could not be barred. The wife shall not daily receive a share of the daily gain; nor can she, after separation, have immediate power over her husband's wealth; nor can the text, which declares property common to husband and wife, be silent from the day when partition is made. Therefore, when the paternal estate is equally divided, should it be impracticable to support his wives out of his own share alone, the husband may take a share for each of his wives, and live in one abode with his wives thus enriched: their partition only takes place with his sons. Accordingly, the expression of *JÍMÚTAVÁHANA*, 'for the want of partition is incidentally mentioned, 'like the want of partition between husband and wife,' is censurable. On the interpretation of *JÍMÚTAVÁHANA* and the rest, is not this inconsistent with the expression "when the father "makes an equal partition" (LXXXIII); for a father receives two shares of the wealth inherited from the grandfather? No; for equal shares denotes equality with each other: and the quantity, not the number, of the shares, has been thereby restricted. Consequently the equality of *each* of the father's two shares with those of the brethren is propounded. According to the opinion of
of

* Partially cited in this place. I complete the text from subsequent quotations compared with other Digests. T.

of those who contend for the equal dominion of both father and son over property of every kind, is not the text, which will be cited (XCII), nugatory? No; for that text only intimates the ownership of both; the present text (LXXXIII) implies partition. Reasoning, say these lawyers, which contradicts numerous authors, and sets at variance the texts propounded by Sages, is a modern mode of exposition.

If a man leave two wives, and by one two sons, and by the other four, partition shall be made, as above-mentioned, among the brothers of the whole and half-blood; but what shares should be allotted to their respective mothers? To this CHANDÉSWARA and the rest would reply, the estate must be divided into eight shares, and two must be given to the mothers, for they are equally wives of the father; (but if any widow belong to a different class from her late husband, she shall receive her portion according to the share which is allotted to her own son, or which would have been allotted to him had she had one;) the six brothers take six shares. But the author of the *Dīpacalīcā* seems to think that no share shall be allotted to the mother, who has sons living; for he cites the text of VYÁSA, premising these words, ‘the sage propounds a special rule.’ However, SRÍ CRĪSHNA TERCALANCÁRA observes in his commentary on the work of JÍMÚTAVÁHANA, ‘both are not entitled to shares, since both are not natural mothers of all the sons; and the natural mother, according to JÍMÚTAVÁHANA and the rest, is alone entitled to a share.’ On this it should be remarked, that a question remains, whether one wife of the late proprietor shall receive a share because she is natural mother of him who makes the distribution, or whether she shall receive no share because she is not the natural mother of a certain other son. According to JÍMÚTAVÁHANA and the rest, “son,” in the text which will be cited* signifying born of her womb, it is a settled rule, that a widow shall receive from sons, who were born of her, an equal share with them, and she cannot receive a share from the children of another wife; therefore, she can only receive her share from her own sons. Let it not be objected, that, were it so, the share of the one might be less

* The compiler has omitted the text in its proper place. See version of it in a note preceding V. 87. T.

less than that of another brother. When partition is made, the share allotted to the mother may be formed by two operations : one share may be assigned to the son, and again a part of that share to the mother ; for equal partition can be effected by this method. For example, in the case proposed, if the estate amount to twenty-seven thousand *suvernas*, a share amounting to four thousand five hundred *suvernas* being allotted to the son of her who has borne two sons, three thousand *suvernas* are set apart on one side, and one thousand five hundred *suvernas* on the other side. In that case the two parts of shares are *equal* to the allotment due to one *son* ; the same is also true of the other : and the two parts become the share of the mother. The difficulty may be thus reconciled*.

If the son refuse to deliver the share of his natural mother, she may exact it even by forcible means ; for the ordinance would be otherwise nugatory ; the term “ equal share ” would be unmeaning ; and the word “ equal ” used in a positive sense, would be futile. This inference stands uncontradicted by any author. But, at present, solely through the tenderness of the mother, such a practice does not occur.

Some lawyers hold, that when partition is made during the life of the father, he shall give an equal share to his wives, whether they have, or have not, sons : and that share is *merely* allotted for their maintenance ; since partition between husband and wife is forbidden, and the text, which declares property common to the married pair, renders vain a partition which has even actually taken place. Again ; when partition is made among grandsons, an equal share with themselves must be allotted by them to their father's wife, who has no male issue, and to the wife of their grandfather ; not to her who has male issue, for the text of VYÁSA expresses, “ but the wives of the father, who have no sons,” &c (LXXXIV). Their natural mother, most venerable, having borne them from her own body, must be honoured with all their wealth, and with every exertion of labour. And this is reasonable : since wives must have property while their husband lives, because they are associated with him, shares must

* The author would have found the example erroneous, had he pursued his proof ; for he cannot so distribute the remainder among the four sons and their mother. T.

must be allotted by an aged father for the support of his wives; but if he reserve for himself as much wealth as he pleases, there is no occasion for such an allotment of shares. When partition is made after the father's demise, since a mother has a claim on the whole of her son's property, she may be supported out of his own share: but unless the stepmother, who has no son, receive a share, she might have no subsistence but what she obtained in alms. However, the duty of reverence towards mothers is ill fulfilled by the perverse people of the present day; for this cause, they are sometimes compelled by virtuous men to allot some wealth as a fixed share. In that case, a gift made on temporal considerations, for a worldly purpose, by a wife or widow, and a sale or other alienation for her own pleasure, are not valid: but it is fit she should have power to give, sell, or otherwise alienate her allotment, for her own support, or for religious uses; since it was delivered to her for those very purposes.

But when the father of an only son leaves one wife, then food and vesture only shall of course be allotted to her, since no text propounds the immediate appropriation of a share; and the law has only ordained the allotment of a share to the mother or stepmother, when partition is made among sons. Again; when a distribution is made by a father, if his own mother be living, no share is ordained for her; since the law has only ordained the allotment of a share to the mother, when partition is made by sons with each other. It should not be argued, that *her participation* may be deduced from the law which ordains the allotment of a share to a grandmother, in the case of partition among grandsons. This is not partition made by her grandsons, but by her son; it is, therefore, a distribution *made* by her own son. According to the opinion of those who contend for the equal dominion of father and son over property inherited from the grandfather, there is this difference, that a share must be allotted to the grandmother, since partition by the choice of the son is admitted. When partition of property, which he himself acquired, is made by a father, the share of his wife and the rest seems to be incidentally discussed. A father may divide, at his pleasure, property which he himself acquired, *giving more to some and less to others*; or he may give the first-born the portion of an eldest son; or make all the shares equal: these three cases are considered in
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the *Retnâcara* as *solely* relating to partition during the life of the father. The text which concerns property inherited from the grandfather, shall be subsequently cited. This appears to be implied.

But some consider the first case *only* as relating to property acquired by the father; for all the cases cannot be regulated by his sole pleasure. Under this case is propounded the reservation of the greatest part of his fortune, and the unequal distribution among sons in consideration of duty or piety, and the like. Under the second case *is propounded* the allotment of an additional portion to the eldest son. The third case relates to sons equally dutiful and the like, and to property inherited from the grandfather.

What is meant by "property which the father himself acquired?" That which the father has acquired, by the acceptance of presents, by the use of arms, by agriculture or commerce, by service or gaming, without employing property left by his own father: this is signified by the term. *VRĪHASPATI* propounds another kind of property acquired by a man himself.

XC.

VRĪHASPATI:—Over property descending from the grandfather, but seized *by strangers*, which the father recovers by his own power, and over what he has gained by science, valour, or the like, the father has full dominion;

2. He may give it away at his pleasure, or withhold it from partition: but after his death, his sons are pronounced entitled to equal shares.

"By strangers" must be supplied. Through inability, it was not recovered by the grandfather.

MISRA and CHANDÉSWARA.

And it has been gained or recovered by the father, through his own ability. The father has full dominion over such property, and

and over that which he has gained by science, valour, or the like. According to the interpretation of CHANDÉSWARA and the rest, the expression, 'if it were gained on the adventure of property left by his father, it is treated as property descended from the grandfather,' is truly pertinent; and, according to this interpretation, the term "by his own power" must be considered as certain and positive. MISRA accordingly adds, 'provided it were acquired without adventuring wealth which had descended from the grandfather.'

It is said, "the father has full dominion:" Has he no dominion over property which had descended from the grandfather, and has not been seized by strangers; or has he dominion but in conjunction with some other person? To solve this question, the legislator subjoins *the second verse* (XC 2). Consequently, at his sole pleasure, he may exclude from participation one who behaves disobediently or the like, and give a greater share in consideration of filial piety or the like: partition is made at a time regulated by his pleasure; and he may reserve the greatest part for himself, when property descending from the grandfather, but seized by a stranger, is recovered by him. But, in the case of property left by the grandfather, and not seized by a stranger, the father is governed by rules of law. Such is the opinion of JÍMÚTAVÁHANA and the rest. But, according to VIJNYÁNÉSWARA and others, the father and son have equal dominion over property inherited from the grandfather, and which has not been seized by a stranger; but the father alone has dominion over that which had been seized by a stranger and is recovered by him. "After his death, &c." (XC 2); this concerns partition among brothers after the death of their father, the portion of an eldest son not being *deducted* as above-mentioned.

XCI.

MENU and VISHNU :—And if a father, by his own efforts, recover *a debt or property unjustly detained*, which could not be recovered before *by his father*, he shall not, unless by his free will, put it

into parcenary with his sons, since in fact it was acquired by himself *.

From the phrase, “which could not be recovered before,” it follows, that it had been seized, *or was unjustly detained*, by strangers. Property of his father, so circumstanced, which the father recovers, is in fact acquired by himself; he shall not, unless by his own free will, divide it with his sons. If his own pleasure be consulted in respect of property acquired by himself, is not the rule different in respect of property inherited from ancestors? YÁJNYAWALCYA declares that rule.

XCII.

YÁJNYAWALCYA:—Overland acquired by the grandfather, over a corrody *out of mines or the like, settled on him and his heirs by the king*, and over slaves employed in his husbandry, (or over gold and the like, *for the word dravya is expounded variously*,) the father and the son, *when the grandfather dies*, have equal dominion †.

“A corrody;” a fixed pension receivable out of mines or the like, and settled *on him and his heirs* by the king or other benefactor. “Wealth” (*dravya*), gold or the like. Over these, namely over land and the rest, the father and son have equal dominion. Partition is made even by the choice of the son; and the shares are equal, as declared by VRĪHASPATI.

The *Dīpacalicā*.

XCIII.

VRĪHASPATI:—Of property acquired by the grandfather, whether moveable or immoveable, equal shares are ordained for the father and the son.

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* MENU, Ch. ix, V. 209. From the context, it has been there translated differently: the present version is more literal. T.

† Book II, Chap. iv, V. 31.

The commentator considers “moveable” as here signifying any thing not immoveable, as gold or the like. In expounding the text of YÁJNYAWALCYA (XCII) the *Retnâcara* has this gloss; ‘that which is fixed or made fast (*nibadhyaté*), is a corrody (*nibandha*), or fixed pension receivable out of mines or the like. “Equal dominion:” in this case no greater share is allotted to one than to another; nor can the father give away such property at his pleasure.’

XCIV.

VYÁSA:—A father and his sons shall have equal shares of a house or of land which had descended from ancestors; but, against their father’s will, sons cannot claim a partition of wealth acquired by their father.

“A house or land” is a mere instance, as appears from the term “paternal,” which denotes wealth acquired by the father himself. It is intimated, that, even against the father’s will, partition of property inherited from the grandfather may be claimed. What will or choice is meant shall be explained in discussing the opinion of JÍMÚTAVÁHANA and the rest. Consequently, the opinion delivered by the author of the *Dīpālicā* is correct, that ‘partition of land, and gold, or the like, inherited from ancestors, may take place by the choice of the son; and the father and son have an equal right to one share each.’ In the text cited by JÍMÚTAVÁHANA, (Book II, Chap. iv, V. 13.) the words “neither the father,” which occur in the last part of the text, bear allusion to property acquired by the father himself; “nor the grandfather” is a mere instance of any ancestor, the great grandfather and the rest. It should not be alleged, that the words “nor the grandfather” are nugatory; since he or any remoter ancestor is father of his own son. Should a dispute arise between grandsons and one who affirms, “this landed property was given to me by their grandfather,” the text is intended to show the invalidity of such gift. Thus some expound the law. Others argue, since the donation will be subsequently declared valid *though im-*
moral,

moral, the phrase must be otherwise expounded, in this mode : since the grandfather has an interest in that which is acquired during his life by his son, (Book II, Chap. iv. V. 56.) and his power of aliening it might be supposed, therefore is this text propounded concerning property acquired by the father. Others again argue, that, as a man is controlled by his son in respect of immoveable property, so is he also controlled by his grandson and the rest : to intimate this, it is said, “nor the grandfather.” Consequently, according to this opinion, a father is not independent in respect of precious stones, pearls, or the like, inherited from the grandfather, nor in respect of immoveable property acquired by himself. Accordingly the text quoted in a former book (Book II, Chap. iv. V. 14.) is truly apposite ; and the text cited by RAGHUNANDANA (XCV) is also pertinent.

XCV.

Uncertain :—By their father’s indulgence sons consume vesture and ornaments, but let not immoveable wealth be consumed even though the father be indulgent.

According to this opinion, does the text now cited relate to property belonging to the grandfather, or to that which belongs to the father ? The first *supposition* is not *right* ; for the father is not independent in respect of vesture and ornaments appertaining to the grandfather. The second *supposition* is not *right* ; for the practice of good men also shows validity in the alienation of property belonging to the grandfather, through *his* indulgence. To this it is answered : dominion over the father’s estate during his life is not propounded, by declaring the equal dominion of father and son over property inherited from the grandfather ; for that inference has been already disproved. But the father alone has absolute property ; and equal dominion is affirmed to show that no unequal partition can be made in this case. Consequently, a gift made by the owner is valid, for he is not insane nor otherwise incapacitated. In like manner, by declaring that “the father has no power” &c. (XXVIII), he is prevented from

from making an unequal division without a sufficient cause. Again ; donation and sale are forbidden, to show the immorality of the act, not to annul the gift or alienation : and that is evident on the exposition of JÍMÚTAVÁHANA and the rest. The gift of vesture and ornaments, through indulgence, is not forbidden.

Or vesture worn on the body may be compared to ornaments worn by a wife during her husband's life (CCCCLXXIII) : such vesture and ornaments, used though not *expressly* given, belong to the wearer. The father infringes no prohibition ; for he has not aliened them. But the dissipation of immoveable property is not legal. That is declared by the text (XCV). Consequently this text relates both to the property of the father and to that of the grandfather.

Since a householder is not his own master in respect of what has descended from an ancestor, as declared in the text cited by RAGHUNANDANA and others (Book II, Chap. iv. V. xv, 3.) ; and since NÁREDA pronounces void a gift made by one who is not his own master (Book II, Chap. iv. V. liii, 2) ; the gift of property, which had descended from an ancestor, being made by the father even through indulgence, should not be valid. As for what is said, that gift and sale are forbidden, to show the immorality of the act, not to annul the alienation, that is incorrect ; for the invalidity of the gift is intimated even by the phrase "let not immoveable wealth be consumed." It cannot be a practical truth, that a man may not consume that of which his gift would be valid ; and there is no argument by which it can be established to be a moral truth : neither, *on the other hand*, is it inconsistent with common sense. The seeming difficulty is thus removed. As for the second case, the text cited (Book II, Chap. iv. V. xv, 3.) has been otherwise expounded in the chapter on Subtraction of Gift : and if any father, infringing the law, absolutely give away the whole or part of the immoveable property acquired by himself, or inherited from his own father, that gift is valid, provided he be not impelled by lust, or wrath, *nor act with* guile, or the like. However, he commits the moral offence of violating the law. More on this subject shall be subsequently delivered with the opinion of JÍMÚTAVÁHANA and the rest. Accordingly it is recorded in the *Purānas* and

and other works, (and instances of the practice sometimes occur in certain countries,) that a king has bestowed his *whole* kingdom on a son pre-eminent in virtue, or senior by birth.

The father of an only son shall reserve two shares under the rule of SANC'HA and LIC'HITA (XLIV). The text of NÁ-REDA (XCVI), and that of VRĪHASPATI (XCVII), concern this very case. Thus far has been detailed the exposition delivered in the *Dīpacalicā* and other works. *We next proceed to the opinion of JÍMÚTAVÁHANA and the rest.*

By declaring the equal dominion of father and son over property inherited from a grandfather, it is intimated, that, when one son deceased in the lifetime of his father, who is since dead, the grandsons shall take their own father's equal share when partition is made; the whole shall not be taken by sons alone, in right of proximity, nor because they give two funeral cakes, which the last possessor was also bound to offer, *namely to his father and grandfather, whereas his grandsons only offer a funeral cake to his father.* "Grandfather" is in this place an instance merely which comprehends the great grandfather, and "father" comprehends the grandfather. The text is interpreted verbally according to the literal sense, and figuratively according to the secondary sense: and this is suggested by the coincidence of the text of CÁTYÁYANA (LXXIX). Or the interpretation, proposed by D'HARÉSWARA, may be admitted, as follows: in the case of property acquired by the father himself, unequal distribution in consideration of filial piety or the like is not immoral; but, in the case of property inherited from the grandfather, it is immoral: should an unequal distribution of property inherited from the grandfather be nevertheless made, a second partition cannot be *required*, but the father is guilty of a moral offence; as is intimated by JÍMÚTAVÁHANA *in these words*, 'unequal distribution made by a father is only lawful, *morally considered*, in respect of property acquired by himself.' Consequently, since the father has full power over wealth which he himself acquired, his unequal distribution of it is lawful; but, in respect of property inherited from the grandfather, that *unequal distribution, morally considered*, is unlawful. This appears to be his meaning. Since texts which propound a control in regard to property inherited from the grandfather, seem to intend generally moveable
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as well as immoveable property, YAJNYAWALKYA (XCII) delivers a special rule to obviate that conclusion. Consequently, since the father has full power over precious stones, pearls and the like, even though inherited from the grandfather, there is no objection to his unequal distribution of such property : it is only forbidden in the case of land and the like : and the word “wealth” (*dravya*) here signifies bipeds, as slaves and the rest, for they are attached to the glebe, *being employed in the husbandry* ; and slaves, as well as immoveable property (such as land and the like), are mentioned in a text above cited (Book II, Chap. iv. V. 14.). Such is the exposition of RAGHUNANDANA. In the text of VYÁSA likewise (XCIV), the terms “a house or land” comprehend a corrody, and slaves as well as immoveable property ; and the term “moveable” in the text of VRĪHASPATI (XCIII) intends slaves only : this is made evident by another text (Book II, Chap. iv. V. 13.). Since the word “grandfather” occurs in the text ; this, *says* JÍMÚTAVÁHANA, relates to his property : and, as appears from the word “whole” repeated in that text, the gift of all the precious stones, pearls, and the like, inherited from the grandfather, is not immoral, but a gift of the whole immoveable property is an offence. Even though the immoveable property be acquired by the man himself, it is proper to affirm, that the gift or other alienation of it is immoral (Book II, Chap. iv. V. 14.). Then, what difference is there between immoveable property acquired by the father, and that which is inherited from the grandfather ? The difference consists in the legality or illegality of unequal distribution in consideration of filial piety and the like. But if the whole immoveable property be given away, the consequent distress of the family, through want of subsistence, is the sole cause of moral guilt : the gift or alienation is not annulled ; for it is made by an owner, who is neither insane, nor otherwise incapacitated. MENU inculcates the necessity of supporting the family (Book II, Ch. iv. V. 11.).

Some incidental observations may be added. Two texts cited by JÍMÚTAVÁHANA (Book II, Ch. ii. V. 6. and Ch. iv. V. 18, 5.) are also intended to show the immorality of the act, not to annul the sale or other alienation ; for each parcener has an uncertain interest in the whole. The sense of the text

explains the cause ; since one parcener has not competent power, therefore he ought not to sell or give away immoveable property, which the family hold in coparcenary : accordingly heirs have a lien equally on the immoveable heritage, whether they be divided or undivided ; that is, one has not a greater or less lien than another. “ Divided ” supposes the case where any part of the immoveable heritage remains in common. But, on this interpretation, we do not determine for what purpose the word “ immoveable ” is added. The opinion is liable to this objection : according to JÍMÚTAVÁHANA, who contends for dispersed property vesting severally in the coparceners, there is no difficulty in not establishing that a declaration in the subjoined form does not divest property ; “ let this, whether it belong to another or to “ me, become the property of DÉVADATTA.” But that has been asserted, because NÁREDA, under the title of Subtraction of Gift, not noticing joint property among things deemed ungiven, enumerates it among those which may not be given. Hence, whether it be common to the parceners (the several property being yet unascertained by partition), or be the several property of one, the gift or other alienation of effects, made by one heir without the assent of the rest, does annul his right ; but with their assent, it transfers the property of all the coheirs. In this case, all partake of the merit *of the gift*, or share the price *of the sale*, and so forth ; but, when aliened without their consent, he, who alienes it, alone incurs the moral guilt, but all partake of the loss. This is a demonstrated rule. However, if he give away that which ought not to be given, common sense shows that he shall be punished.

RAGHUNANDANA observes, ‘ the text cited (XCV) relates ‘ to property which had descended from the grandfather : that ‘ only which has been acquired by the father himself, and is given ‘ by him, may be consumed ; else another foundation of law, ‘ besides scripture, must be sought.’ What text of scripture can be now produced as the foundation of these laws ? It should not be affirmed, that the scripture, on which the text (Book II, Ch. iv, V. 13, last hemistich) is founded, may run thus ; “ aliene not the immoveable property of a grandfather.” A text of scripture, which prohibits the alienation of immoveable property acquired by a man himself, must also be sought for the ground of another

another text (Book II, Chapter iv, V. 14.); and it cannot have the same import with that which forbids the alienation of the immoveable patrimony, by showing the gift to be invalid through the medium of forbidding the consumption of the immoveable wealth (XCV). To this it is answered, RAGHUNANDANA considers this text as relating to partition of heritage, since that subject is discussed in his work both before and after the quotation of the text. Consequently, immoveable wealth inherited from the grandfather, and given or *unequally* divided through the indulgence of the father, or through his favour, in consideration of filial piety, of a large family to maintain, or of inability to earn a livelihood, shall not be consumed nor enjoyed *as so distributed*; for this coincides with the text which declares the equal dominion of father and son. But precious stones, or the like, inherited from the grandfather, and so distributed, may be *so* enjoyed; for that coincides with another text (Book II, Chap. iv, V. 13.). But some think it reasonable to infer from the text (XCV), that a valid gift, sale, or other alienation at the pleasure of the father, is only unobstructed in the case of property different from the immoveables inherited from the grandfather, not in the case of land which appertained to that ancestor. That is wrong; for the term “at his pleasure,” in the text of VISHNU (XXV), denoting arbitrary choice, cannot relate to the double share. But, after premising the text of NÁREDA as relating to the patrimony inherited from ancestors, the observation, that this text (XCV) concerns the patrimony so inherited, refers it to subtraction of gifts, which would be inelegant: and it would contradict a subsequent remark, ‘because property, consisting in the power of aliening at pleasure, exists equally in this and in other wealth.’ For the fifth *or ablative* case, *assigning the reason*, is only pertinent under the rule, that whatever be held as property by any person, his gift of it is valid. But that rule is in this instance infringed; for, wealth left by the grandfather being held as property, the gift of it is, *nevertheless*, invalid. Let it not be argued, that, since it is necessary to suppose *in that rule* cases different from the sixteen void donations which have been propounded by NÁREDA for the purpose of annulling a gift made by an insane person, and so forth, there is no breach of that rule in this instance, because it falls within the sixteen void gifts, since

since the householder is declared not to be independent in respect of wealth inherited from ancestors (Book II, Chap. iv. V. 15, 3.). Were it so, he would have no independent power over precious stones and the like inherited from their forefathers. Nor should it be argued, that the text (Book II, Chap. iv, V. 15, 3.) relates to other wealth besides precious stones and the like, since it coincides with that of YAJNYAWALKYA (Book II, Chap. iv, V. 13.). There is no authority for restricting the sense; and the text (Book II, Chap. iv. V. 15, 3.) bears a different import, being delivered under the title of Subtraction of Gift. Accordingly the author of the *Mitácshará*, otherwise expounding the equal dominion of father and son over property inherited from the grandfather, says, ‘the gift is not void in this case.’ He adds, ‘even what the grandfather himself acquired, ought not to be given away by him, if his son or grandson be living:’ and in the title of Subtraction of Gift he expressly says, that ‘gifts are only invalid in the sixteen cases of void donations.’ So, in expounding the text relative to land acquired by the grandfather (XCII), he notices this distinction: ‘but, over property inherited from the grandfather, both have indiscriminate dominion; the sons have therefore power to forbid *alienation*.’ Neither CHANDÉSWARA, nor any one of his followers, has affirmed, in express terms, that the gift of property, which had descended from ancestors, is invalid. But JÍMÚTAVÁHANA, who is followed by RAGHUNANDANA, considers the text (Book II, Chap. iv, V. 13.) as forbidding gift or *alienation*.

In partition of property inherited from the grandfather, whose will is consulted? The answer is, partition is granted by the sole will of the father; for he is owner of that wealth. Consequently, the term “at his pleasure,” in the text of VISHNU (XXV), signifies his pleasure relative to unequal partition, not his will expressed in these words “let there be partition.” In like manner, by declaring equal dominion, that option of *unequal division* is excepted, not the choice of partition in general. Again; the text of MENU (XCI) supposes no desire to make an unequal division. In the text of VYÁSA (XCIV) the same is also supposed in the term “against his will.” No distinction of property acquired by the father or grandfather being propounded in the several texts (XXII, XVII, XX, &c.), this circumstance is the

the foundation of the present inference. It is liable to this objection, that there is no ground for judging what kind of will is determinately meant in the texts of VISHNU and the rest. In the phrases, "he shall not, unless by his free will, make a partition;" "he may give or reserve, at his pleasure, any part of his own acquired wealth;" and "against their father's will sons cannot claim a partition;" will is considered as relating to partition alone, as appears from the context: but here, again, there is no proof that partition can only be made by the will of the owner; for, in the case of payment of debts, delivery occurs by the will of the king, or by that of the creditor, who receives payment. Let it not be argued, that, were it so, partition or gift might be exacted at the option of a stranger. Property and its owner are not subject to the control of a stranger. Accordingly sale does not take place by the will of the purchaser. Then how can the father, and the patrimony which had descended from the grandfather, be subject to the control of the son? For this very purpose, ownership is figuratively attributed to the son. Consequently, the bank of the Ganges, though different from the river itself, being figuratively called by that name in the phrase 'a cowpen situated on the Ganges,' and in similar expressions, as the coolness, purity, and other properties of the Ganges are thence assumed; so, ownership being figuratively attributed to the son, though he be not the *true* owner, a right attendant on ownership is alone assumed: and that right consists, according to JÍMÚTAVÁHANA, in the power of claiming partition, and in that of resisting unequal division; for there is no ground for selecting one of these rights to the exclusion of the other. It does not consist in taking an equal share with the father; for that is not acknowledged by JÍMÚTAVÁHANA. This, properly explained, is the life of the opinion maintained by CHANDÉSWARA and the rest. However, there is this difference according to them, that the son has only dominion over the patrimony inherited from the grandfather.

What is the father's share of the patrimony inherited from the grandfather?

XCVI.

NÁREDA:—A father, making a partition, may reserve two shares for himself.

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That is, a father, dividing the estate, may reserve two shares in his own right. This text, not being applicable to his own acquired wealth, for which it is already provided that he may keep the greater part of it and remain in his house (XXIII), must relate solely to wealth inherited from the grandfather.

XCVII.

VRĪHASPATI:—The father, who, during this life, divides *the land which his own father left him*, may himself take twice as much *as each of his sons*.

This and the text of SANC'HA and LIC'HITA (XLIV) must be considered as relating to that subject. In the text cited (XLIV) the apposition of the words "one" and "son" is in the form called *tat puruṣha*, "son of one;" for this form is preferable to that which is called *bahubrihi*, because the last term predominates*. By this expression, the son of two fathers is excluded from the text. Sons begotten on the appointed wife by a kinsman are sons of two fathers, because they are produced by the seed of one in the field of another (CCXXXIX). The same is also true of sons given and other adopted children. Since the apposition called *bahubrihi* may be also admitted when *the sense it conveys* can be justified by reasoning, the observation of CHANDESWARA and the rest, that 'the father of an only son shall have two shares, but the father of two or more sons shall have one share,' is accurate. If this be alleged, it must be inquired, what reasoning can justify the variation of the father's share with the difference in the number of sons. It should not be argued, that, since the parity of shares is ordained by a text of VRĪHASPATI (XCIII), the double share must of course be affirmed to be the sole right of a father, who has an only son. The seeming difficulty may be removed by explaining that text of VRĪHASPATI as relating to the father of a son begotten on an appointed wife by a kinsman. Again: the father is sole owner of wealth inherited from the grandfather, as well as of that which is acquired by himself; by his choice, partition is made;

* A reason founded on a grammatical rule. T.

made ; and he shall have two shares. But the adoptive father of a son, begotten on his wife by a kinsman, shall have one share, because *his paternity* is inferior, having adopted the offspring of a different natural father. This concerns immoveable property and the like. But, in the case of precious metals, pearls and the like, the father may reserve the greatest part of such wealth, and he may make an unequal division of it, giving more to some and less to others. Such is the opinion of JÍMÚTAVÁHANA and the rest.

Lest sons be distressed by a gift or other alienation in favour of an unworthy object, it is forbidden in the case of immoveable property, even though acquired by the father himself (Book II, Chap. iv, V. 14.) Consequently, the father is guilty of no offence in giving away or *otherwise* aliening such property with the consent of his sons. The text relative to enjoyment by indulgence (XCV), propounds a distinction between property real and personal, in respect of a valid title vested by mere enjoyment through indulgence. The gift of immoveable property and the like, to sons and the rest, is valid, as it is to strangers. The texts of YÁJNYAWALCYA and VRĪHASPATI (XXXIII and XXXI) relate to wealth acquired by the father ; for they coincide with the text of NÁREDA (XXXII), which must relate to the property of the father, since it expresses, “ the father is lord of all.” However, the unequal distribution made by a father, in consideration of filial piety or the like, has been already restricted to his own acquired property : that cannot take place in respect of wealth inherited from the grandfather.

But others argue, from the text of MENU (XCI), which forbids participation, unless by his free will, in the hereditary estate, which has been recovered by the father, that in other cases partition may be claimed even against his will. Thus alone can the text of VYÁSA (XCIV) be accurately applied. By the word “ equal,” in the texts of YÁJNYAWALCYA and VRĪHASPATI (XCII and XCIII), the parity of rights is propounded : and that parity consists in the son’s concurrent option of claiming partition. As, in consequence of the father’s ownership, a distribution takes place by his choice, so likewise, in consequence of the son’s *title*, under the authority of the law, partition also takes place by his choice. Such is the practice. Parity in regard to
chattels

chattels equal in value or the like, so that the son shall receive the very same amount which constitutes the father's share, is not intended : for his double share is ordained by the texts of NAREDA and the rest. The import of the words "one" and "son," in the text of SANC'HA (XLIV), must be understood in the mode proposed by JÍMÚTAVÁHANA and the rest. Or "one son," a mere instance comprehending the case of two or more sons, must be considered as an answer to this question : 'in the case of many sons, since they each take one share, and the father takes two shares, they have a less portion ; in the case of one son, shall more be taken.' Or the mode of interpretation proposed in the *Párijāta*, may be accurate ; 'let the chief son (for the dictionary of AMERA exhibits that sense of the word *éca* "one"), that is, the eldest son, take two shares, as also directed by the text of VRĪHASPATI' (XLV). Or the apposition may be in the form called *bahubrihi*, "he who has one son, that is; an excellent son, who earns wealth:" consequently the meaning, as deduced by implication, is, that the father shall take two shares of wealth acquired by the son, as ordained by CÁTYÁYANA. But as for what is said, that the texts of VRĪHASPATI and the rest, which allot two shares to a father, relate only to wealth acquired by him, and that, in the case of property inherited from ancestors, the decision is regulated by other texts of VRĪHASPATI and the rest (XCIII) ; to which, *say our opponents*, its inconsistency with the text of HÁRĪTA (XXIII) must not be objected, on the argument, that will or pleasure, denoting arbitrary choice, cannot relate to the double share : for, since there is no certainty what is signified by the term "greater part," which denotes any number from three to 2,187,000 *, it may be considered as intending the double share. That is wrong ; for parity with the father being stated in the text of VRĪHASPATI (XLV) as a cause of receiving indiscriminately two shares of property inherited from the grandfather, and of wealth acquired by the father himself, it is proper that the father should have two shares *of the estate however* acquired. This text does not relate to a father eminent by his virtue : for brethren endued with good qualities cannot be equal

* *Mahácsbaubini* ; an army consisting of 218,700 squads (*patti*) ; each containing one elephant, one car, three horses, and five foot soldiers : an improper example in this case. T.

equal to a father endued with the same good qualities; the parity must be deduced from the virtue of the brethren, and the simple relation of the father. "May divide the estate," in the text GÓTAMA (XX), must be expounded 'may obtain shares.' If partition may take place even by the choice of the sons, may not a son make the partition while his father lives? No; for he is in no text described as the person who makes the distribution. Therefore a father, induced to make a partition even by his son's election of it, shall take his own double share. Accordingly, the latter phrase, "while the father lives, if he choose to divide it," is pertinent. Consequently, if it be much against the father's inclination, partition of wealth inherited from the grandfather shall not be made; for a son is declared not to be his own master while his parents live (Book II, Chap. iv. V. xv. 5). But sons, oppressed by a step-mother or the like, may apply to the king, and obtain from their father a partition of the patrimony inherited from the grandfather; not a partition of wealth acquired by the father himself, unless by his favour. This is the whole meaning of the law.

If a gift to any son be valid, why is not the allotment of a greater portion to any one son *also* valid? Since there is nothing in the law to prevent the investiture of property by an act of the will in favour of another, declared in this form, "let this chattel, quitting me, become his," the gift is valid; but an act of the will in regard to partition, wherein unequal distribution is designed, and which may be expressed in these words, "let this man have this as his share in right of filiation or the like," being opposed by the law (XXVII and XXVIII), does not transfer property. Let it not be objected, that the additional words "in right of filiation or the like" are nugatory; and therefore the act of the will in regard to gift and to partition may be the same. Were it so, as a gift in favour of a stranger is valid, so would be partition; and the word "sons," and similar terms, in the texts of YAJNYAWALCYA and the rest (XXVI &c), would be unmeaning. However, the gift of a man instigated by lust, wrath, or the like, is not valid; as has been mentioned in the chapter on Subtraction of Gift.

The period when partition of wealth inherited from ancestors may be made, has been also propounded by GÓTAMA (XX).

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“If their mother be too aged to bear more sons,” relates to the patrimony which had descended from the grandfather; for, unless the mother be too aged to bear more sons, partition could not be made among existing sons, since it is reasonable to reserve for those who may be hereafter born, their right to the patrimony inherited from the grandfather: and this is a mere instance comprehending the case of a father capable of connubial intercourse, but refraining from it: else the son of another wife could have no share. This is evident in the text of NÁREDA.

XCVIII.

NÁREDA:—When the mother is too aged to bear more sons, and all the sisters have been given away *in marriage*, and the father either refrains from pleasures, or withdraws from worldly concerns, *then shall partition be made**.

XCIX.

VRĪHASPATI:—After the death of both their parents, partition among brethren is ordained; and, even while their parents are living, it is proper, if the mother be too aged to bear more sons.

This text of VRĪHASPATI also relates to partition of property left by the grandfather. If shares have been distributed, although the mother were not too aged to bear more sons, what should follow? has a son been born after partition, or not? In the first case, the remaining wealth, omitting what has been consumed, must be brought together, and a second distribution must be made: for sons, though born after partition, claim *shares of* the patrimony which had descended from the grandfather. But, in the second case, that very partition is valid. Let it not be objected, that, since the mother's arrival at a certain period of life can alone entitle the parceners to divide *the estate,*

* The last hemistich, read variously, forms the first part of the verse numbered VI. T.

estate, that partition, being made by persons not authorized *to do so*, is void, like one which is made by a stranger. Since the phrase, "when the mother is too aged to bear more sons," may be explained as providing for the participation of a future son, there is no proof by which it can be established to propound a distinct authority for partition. However, property, ill distributed, must be again divided.

C.

VRĪHASPATI* :—When a partition has been made between a father and his sons by the same wife or by different wives, the sons who may be born after the partition shall inherit the estate of the father :

2. A son born before it shall have no claim on the paternal estate *unless he reunite himself*; nor a son born after it, on that of his brother: the duty of paying debts, and the right of giving, pledging, or selling, follow the property inherited; *so that the son born after partition must pay the debts of the father contracted before it.*

What is the application of this text, cited by RAGHUNANDANA and others, which signifies, that the son born before partition shall have no claim on the share reserved by the father when he divided the estate among his sons, nor on the share allotted to his brother by the same partition, nor any power to receive or discharge debts *of his former coheirs*? and what is the application of the following text cited by JĪMŪTAVĀHANA and the rest? for a second partition is directed when a son is born after the first.

* Cited anonymously, but attributed to VRĪHASPATI in a subsequent chapter. T.

CI.

MENU :—A son born after a division *in the lifetime of his father*, shall alone inherit the patrimony, or shall have a share of it with the divided brethren, if they return and unite themselves with him*.

No ; for those texts may relate solely to property acquired by the father himself. The reverse should not be affirmed, that the former text (XCIX) relates to property acquired by the father, and this (CI) to wealth left by the grandfather. In the case of wealth inherited from the grandfather, should the prescribed double share received by the father be consumed by use, sons born after partition would be destitute of property ; but, in the case of his own acquired wealth, since the father may reserve the greatest part of it, they will also receive allotments out of the remainder of the fortune reserved : it is therefore proper, not to affirm the reverse *of the proposed exposition*. JÍMÚTAVÁHANA observes, if partition of wealth inherited from ancestors be made before the mother be too aged to bear more sons, that partition is not proper ; since sons, born afterwards, might be deprived of subsistence (Book II, Chap. iv, V. 12.)†. He considers the hereditary means of support as intended by the word “subsistence” (*vrítti*), which occurs in the text quoted. But others, finding the word “mother” in every text which requires the cessation of her periodical discharges, argue, that the age of the mother is a requisite condition of a distribution proceeding from the son’s choice ; and this only regards wealth inherited from the grandfather. Then, if partition of property inherited from the grandfather be undertaken by the father’s choice, the age of his wife would not be a requisite condition? That may be

* Quoted partially and anonymously in this place. It is cited at large in Chapters VII and VIII, where the last hemistich is otherwise expounded. T.

† Cited in this place as a text of MENU, but formerly quoted from another author. T.

be true. Let it not be objected, that this would contradict the text quoted (Book II, Chap. iv, V. 12.) The word “substance” (*vr̥tti*) does not signify wealth left by the grandfather. That term is employed by excellent persons of the present day, as *also* signifying land, a corrody or the like, even though acquired by a man himself; and it is so used by VIJNYÁNÉSWARA. This text, therefore, has the same import with one which has been already quoted (Book II, Chap. iv. V. 14.): and if sons apply to the king for partition, he must inquire whether the mother be past child-bearing; for, if they obtain partition on a false pretence, the rule of VISHNU (CII) must be observed, that the brethren only shall give a share *to the son born after partition*, not the father, since he has committed no offence. The text which will be quoted from YÁJNYAWALCYA bears the same sense. But if partition be made by the father’s election, “a son born before it shall have no claim on the paternal estate, nor a son born after it on that of his brother,” and so forth, as will be mentioned.

CII.

VISHNU:—Sons, with whom the father has made a partition, shall give a share to another son who is born after it.

Hence, while the father’s right subsists, his choice alone determines the time for *making a partition* of his own acquired wealth: but, in the case of property inherited from ancestors, it is also requisite that the mother be past child-bearing; and, *with this reserve*, the father, or (according to another opinion) he or his son, may choose *the time: partition of* both sorts of property *may be made*, when the father’s right terminates *by his demise natural or civil*. These are three periods *for making a partition*, according to JÍMÚTAVÁHANA and the rest. But VIJNYÁNÉSWARA observes: ‘hence, while the mother is capable of bearing more sons, and the father is still attached *to worldly matters*, partition of wealth which was inherited from the grandfather

' may take place by the choice of his sons, even against his ' will.' He considers the phrase, "when the mother is too aged " to bear more sons," as relating to wealth acquired by the father himself.

When the third measure of the text of NÁREDA (XCVIII) is read *vinaśhté vápy áśarané* (VI), the preceding phrase, which literally signifies "when the mother's periodical uncleanness has " ceased," must be considered as denoting the impossibility of her bearing more sons. The word *áśarané* is expounded, "having quitted the order of a householder." This cannot be questioned as a vain repetition of the term "having resigned" or withdrawn from worldly concerns; for, when a man, abiding in his own house, but devoting himself wholly to the worship of the Deity, to whom he has dedicated his service, withdraws from worldly concerns, he has resigned; but, when he enters into the fourth order, he becomes an anchorite. Either way, abdication is the sole ground on which his property is annulled. Consequently, divestiture of property happens three ways; by degradation, by abdication or renunciation, and by natural death. But to this may be objected the case of a leper, *whose property is divested in none of those modes.*

A question may be here proposed for disquisition: if a man, surviving his resignation of worldly concerns, and urged by his fate, cohabit with his wife and beget a son after his property has been divided among his children, what would be the consequence? It is answered, the father's property being divested by abdication, which is a *virtual* gift, and the property being vested in his sons without any effort on their part, how can a child born afterwards have any claim thereon, whether it be or be not divided, since it does not belong to his father? But, in the case of partition made while the mother was capable of bearing more children, a portion must be allotted *to a son born after it*, under the authority of the law; for otherwise the phrase, "if the mother be too aged to bear more children," would be nugatory. "And when all the sisters are given away *in marriage*," is added to shew the necessity of bestowing them *in marriage* after the death of the father; it does not denote, says JÍMÚTAVÁHANA, that partition cannot take place unless the sisters have been given away *in marriage*.

CIII.

CÁTYÁYANA :—Out of property acquired by a son, the father, *if he be living*, shall, *on a division of the family*, receive two shares *in some cases*, or half *in others* : and the mother, if the father be dead, shall take an equal share with her son.

What is the import of the first hemistich in this text propounded by CÁTYÁYANA ? Does it relate to property acquired by the son, with or without the use of the patrimony, or to property of another sort ? On this point JÍMÚTAVÁHANA observes, ‘ of wealth acquired by a son through the use of the patrimony, the father shall have half ; the son, who acquired it, two shares ; and the rest, one share each : but, out of property acquired by a son without the use of the patrimony, the father shall have two shares ; the son, who acquired it, shall also have two shares ; and the rest are not entitled to any participation.’—According to this gloss, the sense is, because the property was acquired by the son. It is consequently implied, that the father receives either half, or two shares, of wealth acquired by his son. We must not, with the northern RÁMACRĪSHNA, fall into the error of *literally* explaining the terms “ out of property acquired by a son,” considering “ acquisition ” (*arjana*) as an epithet of the other part of the compound (*vitta*) “ *wealth or property*,” because the rule expresses, that ‘ neuter derivatives of words denoting action are similar to nouns signifying substance.’ This has not the natural properties of substance.—Whatever word occurs as the last term in the apposition named *śaśhí’i tat puruṣha*, is considered as an accident or epithet of the preceding term, whereas, in this instance, the subject is placed last (*arjana vitta*). But in the instance of the term “ front of the body ” (*pūrvā cāya*), and similar forms of expression, the exception is founded on the special powers of the word *pūrvā* and the rest. Nouns of action are not of course considered as epithets, because they are similar to nouns signifying substance ; nor is their similarity to such nouns admitted for that purpose. Must not

not the similarity of verbal nouns to words signifying substance, be acknowledged, because they are not treated like those words of action which bear the sense of conjugated verbs? This objection may be answered by asking, Are you then ashamed to say that neuter derivatives of terms signifying action are similar to those words of action which take the inflections of nouns? Consequently, the parity of neuter derivatives with nouns signifying substance, only authorizes their use in the dual and plural numbers. As for the notion, that action, being an assemblage of single acts, is of course numerous, and may therefore be expressed in the plural number; that is futile. Were it so, words of action bearing the sense of the verbal inflection, (*or of conjugated verbs,*) would also express multitude. Grammarians do not admit the unity of acts naturally different *and unconnected*, such as gratifying, throwing, respecting, and so forth. Nor is it usual to say “boilings,” *in speaking* of that action in one house, where all the operations of the work are collectively performed.

This is proper; for it is intended to show that a father shall take only two shares out of property acquired by his son through the use of wealth common to all the brethren, and without employing the several property of the father. RAGHUNANDANA.

But others hold, that the father shall receive, *for his share*, half *as much as he who acquired it*, if the patrimony were not employed; for his son acquired the property, and the father has *only* a claim in right of paternity: but, if the patrimony were employed, he shall receive, *for his share*, out of the whole wealth, twice as much as he who acquired it; because he has claims both as owner of the capital, and as father; the acquirer or acquirers, whether one, two, or more, shall only receive a third part. Since sons have also an interest in their father's property, half the sum is the only proper allotment; and that being the case, *the father ought not to receive a double share**: if this be alleged, the answer is in the negative; for, although their interest in his property be admitted, they have not immediate power to dispose of it at pleasure. In such a case, ought the rest to receive a share or not? They may have a share, since the claim of

* An omission is here supplied from conjecture. T.

of sons on their father's estate, during his life, is admitted for this very purpose.

JÍMÚTAVÁHANA also proposes another mode of interpretation: 'a father, who is endued with good qualities, such as science, valour, or the like, shall take half the wealth so acquired; but, if his claim be solely grounded on paternity, he shall have two shares.' Here, nothing is expressly said in regard to the patrimony being used or not: but as a son partakes of wealth acquired by his father, so a father is likewise entitled to partake of wealth acquired solely by his son. This is the only accurate exposition: but is it not at variance with the opinion which maintains that a son has no property *exclusively his own*? Although the father be sole owner of the whole, both at the time of acquisition, and afterward; still, when partition is made, a portion shall be allotted to the son, under the authority of the law, in right of acquisition.

But some expound the text, 'the father shall have a double share, because he acquired both the son and the wealth.' Consequently the sense is, 'if there be a son, the father, who acquires property, shall receive two shares:' and when partition of his own acquired wealth is made by the father, he shall take half, or two shares, at his option. That is not consistent with the opinion of JÍMÚTAVÁHANA; for option, considered as arbitrary choice, cannot be limited to *the alternative of two shares or of half*. As for the son, acquisition *affirmed concerning him* is partial, merely *asserted* because *a gift of a son* has occurred when a man gave away his whole estate. It is therefore reasonable, that, as the son partakes of wealth acquired by his father, so should the father partake of wealth acquired by his son. Consequently, since this text may be adduced to satisfy the question, what share should in that case be received by a father? there is no good argument to support such a bad construction *as that which had been proposed*.

This, however, is liable to objections. If a father have not property in his son, then only can the acquisition be partial *or figurative*. Now such property in a son must be acknowledged; else, the rule of law, "both parents have power to give, to sell, or to desert a son" (Book II, Chap. iv, V. 8.), would be unmeaning; for gift or other alienation without property is impossible.

possible. The expression of the great teacher of logick*, "GOD, to whom generated worlds truly belong," could not be pertinent, unless a father had property in his son. The *Mārcandēya purāna* and other works record the sale of his wife and son by the universal monarch HERISCHANDRA, to make good the sacrificial fee of the sage VIŚWAMITRA, on the performance of the royal sacrifice called *rājafūya*: and the sale of the sage S'UNAHŚĒP'HA by his father, is recorded in *Purānas* and other works. Yet, in fact, the same ownership of a wife and son, as of chattels, is not admitted; *for*, were it so, sons would be owners of each other after their father's demise. Let it not be argued, that such ownership does subsist; but, as is deduced from reasoning, vested in each over himself; and hence a son whose father is dead, may legally sell himself. A son would be the owner of his mother and sisters. *Now* sons have not dominion over their mothers: nor shall brothers alone give away their unmarried sisters; for that would be reprehensible, while the paternal grandfather is living.

"Half" (CIII) must here signify equable part, by the rule which expresses that equal parts are intended when the proportion is not specified. On the question, whether that half be one share as the moiety of two, or half of the whole, JIMŪTA-VĀHANA says, 'half of the whole sum.' For, if half of two shares were implied, why not say, "or he shall receive one share *in other cases*?" Since the term "two shares" must have some connexion, therefore, to satisfy the question, two shares of what? 'two shares of property acquired by a son,' must be affirmed. Consequently, that being the subject of partition, it is obviously reasonable to infer, 'half of that property likewise, *in other cases*.'

If the acquisition be made on his brother's stock, lawyers affirm it to be the opinion of RAGHUNANDANA, that he, who acquired the wealth, shall in this case also have a double share; for RAGHUNANDANA says, 'when the brother's stock was employed, the father shall have two shares, the acquirer two shares, and the rest one each:' and that *seems* accurate. Or, if it be RAGHUNANDANA's meaning, that the common stock was employed

* UDAYANA'CHA'RYA.

employed by him who made the acquisition, since it would otherwise be inconsistent with the observation, 'if that horse be afterwards allotted to another, equal partition would be proper; for the acquisition is made by the exertions of the one, and by the labour of a horse belonging to the other;' what distribution shall be made when the property is acquired by any one son through his own labour *on his brother's stock*? The answer is, the father shall in that case have two shares, and both his sons one share each. But if it were acquired on his brother's stock and on his own, by his own labour, the acquirer shall have two shares, the father two shares, and he, who supplied funds, shall have one: and in both cases the rest of the brethren shall be excluded from participation. Such is the method consistent with reasoning, to which the law assents.

If a man have sons, and grandsons both in the male and female line, and sons of a granddaughter, and some property be acquired by his son's son, with supplies out of his estate, what is the rule of adjustment in that case? Some argue from the letter of the phrase, "property acquired by a son" (CIII), that what is acquired by a grandson is similar to the acquisition of a stranger. Consequently since the funds and the person have contributed equally *to the acquisition*, half belongs to the paternal grandfather, and half to the grandson; but his uncle shall have no share, for no text ordains their participation. That half allotted to the grandfather is considered as property acquired by him, through the means of the wealth adventured: and hence, wealth acquired through the employment of hereditary property shall also be divided at the pleasure of the father. Is it not an unjust disparity, that a grandson, whose own father is dead, shall have a share of property, which has been acquired by the son of the common ancestor, through supplies from his father's estate; but that the uncle should have no share of wealth so acquired by a grandson, whose own father is dead? No; for there is no proof that the grandson, whose own father is deceased, shall in this case have any share: the word "brothers" occurs in the text of VYÁSA (CX), and it does not follow that a brother's son and his uncle shall share together.

The opinion of these lawyers is not approved by RAGHUNAN-
DANA;

DANA ; for in expounding the text of VYÁSA, he says, “ brothers ” are merely an instance from which uncles and the rest should be also understood. There is equal reason, why sons, grandsons, and great grandsons in the male line shall share in the reversion of property belonging to the common ancestor : for the son of a son also belongs to his ancestor, as the slave of a slave belongs to the master ; and so does the great grandson in the male line : this also is reasonable. May not the same be affirmed concerning the son of a daughter, and the rest ? They are not similar, for their claim is weaker, since they confer no benefit *on the ancestor* while a son is living. If it be alleged, since a great grandson also, whose father is living, is disqualified *for the performance of obsequies*, he has not an equal claim ; this argument is denied—for, when his father dies, he may have a similar claim *with sons*. This is affirmed, considering only natural fitness. If, therefore, property be acquired by the son of a son through supplies from his grandfather’s estate, the grandfather shall have half, the uncles and the rest a share each, and the grandson, who acquired the property, two shares : but if no supplies were received from the grandfather’s estate, the uncles and the rest shall not participate. Thus may the law be concisely stated.

Must not the text, which ordains two shares (CIII), be considered as relating to wealth acquired by a son ? and there is consequently no authority for the receipt of two shares by a grandfather. No ; for it would be unequal that the son of a son should partake of property acquired by the grandfather himself, but the paternal grandfather should not participate in property acquired by his grandson. The word “ son ” is a mere instance of a general sense ; else the same term could not be so accepted in the text of YÁJNYAWALCYA (XXVI). If it be a maxim, that the right of succession is reciprocal, then, should a grandson, who is competent to inherit the property of his paternal grandfather, die, would not the paternal grandfather be his successor, though his father be living ? and hence the word “ son,” in the text of YÁJNYAWALCYA (XXVI), may be taken as illustrating a general sense, from the coincidence of other texts (LXXIX) ; but in this instance there is no authority to support such an acceptation. Then a father would be also incapable of succeeding

succeeding to property which his son acquired without employing the patrimony ; for the text, ordaining a double share in certain cases (CIII), may be explained in some other manner as relating to a father deficient in virtue, *not as relating to property acquired without using the patrimony*. Is not authority wanting to restrict the text, which notices property acquired by a son? for the receipt of two shares, when partition is made, cannot be inapplicable to every case of wealth acquired by a son before partition. On this some remark, that 'the grandson and great grandson in the male line having an equal title to inherit with the son, it is reasonable that they should be equally bound to give shares of what they themselves acquire.' But in the case of an acquisition made by the son of a daughter, should the property of the maternal grandfather have been employed, he shall take a share proportionate to the capital used, and the maternal uncles and the rest *shall* have no shares ; but if the acquisition were made without such use of property, the maternal grandfather shall have no share. This must be considered as the rule in the case of an acquisition made by a son, or by the son of a daughter.

It has been said, this contradicts the maxim that the right of succession is reciprocal. It cannot be argued, that the rule is not infringed, if the condition be added, in *each other's* life-time : for, according to your opinion, a paternal grandfather takes a *share of* property belonging to his grandson, whose father is living ; but this grandson does not *immediately* receive a *share of the* property belonging to his paternal grandfather.

The paternal grandfather does not partake of the wealth acquired by his grandson, whose own father is living, but that father alone *does participate* ; for he has the chief dominion over the person who makes the acquisition ; and, since the acquisition was effected by *the use of* his funds, the paternal grandfather may take one share in proportion to the wealth *employed* ; and, in this case, it is treated like property acquired by himself : but afterwards, when the father makes a partition during his life-time, he shall take two shares, or half (for there is a difference of opinion on that point), because it was acquired on funds belonging to his father. If this be denied, because, were it so, a grandfather, distributing property which has been acquired by a
grandson

grandson with supplies from his (the grandfather's) own wealth, must give to sons more than is allotted as a due share to the grandson who made the acquisition; but no share of such property would be given to the paternal uncles and the rest, when partition of property was made after the death of the paternal grandfather: which would be unequal, since the grandson receives a share of the wealth acquired by his uncles. It is answered, the maxim may be thus stated; he who would take *a share of* another's property, if partition were made in his lifetime, shall give a share of his own property to that person if he be living.

If it be argued, *since* a grandfather has dominion over the son of his son, as a master has over the slave of his slave, therefore he shall receive two shares or the like; *the answer is*, the shares are not in this case received in right of such dominion or ownership. Were it so, the father would take the whole wealth acquired by his son. But they are received under the authority of the text and of the maxim *above cited*. Hence *a share of* property acquired by a grandson, or remoter descendant, whose own father is living, is not received by a grandfather. If it be alleged that the law on this point is founded upon reason; for a father, although he have dominion over the whole property acquired by his son, gives it to his son; he must give that property, so acquired, to him, to whom he gives his own wealth, *namely to his son*: what is there contradictory in this? but, since labour is employed in the acquisition, a greater share is assigned by authors, as it were for the wages of that labour. On this strained refinement some lawyers ground a remark, that the ancestor shall give two shares to the acquirer *who is related to him* through the medium of his son, one share to each of the rest, and reserve for himself two shares or the like according to circumstances. But others argue from the opinion, in which the dominion of the surviving ancestor over sons, grandsons and great grandsons is maintained, that the paternal grandfather, having dominion over his grandson through the medium of his son, shall, when he divides the heritage, take two shares or the like in proportion to the use made of his property, and so forth: the father shall not take that allotment, for he does not make the partition. The whole of the remainder shall belong to the acquirer; but, his grandfather's

grandfather's property having been employed, he must give two shares to the grandfather, whose claim is derived through his own son. Consequently, if the father of him who made the acquisition have four, and the paternal grandfather have three sons, five shares must be allotted to the father of him who made the acquisition, and four to each of the rest; afterwards, when the father of him who made the acquisition divides the property in his life-time, he shall subdivide four of the shares, taking two parts as his own due, and giving one to each of *his sons*: but he must divide the fifth share equally with him who made the acquisition; for it was not acquired by himself, nor by his father or other ancestor; and the rule directs equality where no other proportion is specified: if the acquirer die in the mean time, leaving no son or grandson, then, even though he leave a wife or distant heir, it shall be divided by the father among his sons, like property acquired by himself*.

In partition made by a father, how shall property inherited by him from his maternal grandfather, who left no daughter or nearer heir, be distributed? shall he take two shares or the like, as if it were property inherited from the paternal grandfather; or may he reserve a considerable part of it, as if it had been acquired by himself? To this question some reply, that "his own acquired wealth," in the text of VISHNU (XXV), signifies that which was gained by his own act; but, what is received from the maternal grandfather, being gained without any exertion on the part of the father, is not acquired by his act; he shall therefore receive two shares or the like, as suggested by the general rule. It should not be objected, that the text *only* ascribing to the father and son equal dominion over property left by a paternal grandfather, they have not such claims in this case. Their equal dominion is a necessary consequence of considering the term, "property left by the paternal grandfather," as a mere instance of a general sense: else it would not be a rule, that the father, being son of one born blind, shall take two shares or other *greater* portion of property inherited from the paternal great grandfather. Nor should it be objected, that the acquisition made through his own act can only signify a gain proceeding from

* It is not clear, on what arguments this distribution is proposed. T.

from business appertaining to him ; else what is accepted as a present, or casually found in the middle of his own house, would not be his own acquired property ; and business here signifies his livelihood and so forth, as the case may be : consequently, in this case also, he may justly reserve the greatest part for himself ; but he shall only receive two shares or other *similar* portion of property left by the paternal grandfather, since a special law prevents *another* distribution. The term “ property left by the paternal grandfather,” must be explained property inherited in right of affinity : whether it be received from the paternal great grandfather, or from the maternal grandfather, and so forth, the father and son have equal dominion over it. Nor should it be argued, that property regularly descending from ancestors, is alone intended by the term “ estate left by the paternal grandfather ; ” and that any other property, whether left by a maternal grandfather, or received in a present, or the like, is regulated by the law which allows the reserve of the greatest part and so forth. There is no argument to prove that an estate devolving from the maternal grandfather and the rest is not considered as regularly descending from ancestors : and legislators have not distinguished property devolving eventually *on collaterals or on descendants in the female line*.

That reply is not satisfactory ; for, when the heritage of one who leaves no kinsman devolves on a fellow-student, or on a learned priest, the father and son would have equal dominion. In the case where the son of a daughter's son does not succeed to property eventually devolving *on distant heirs, by failure of the direct descent in the male line*, surely that son has no dominion if his father be dead ; but, if his father be living, he is not even noticed. The very same exposition is proper in respect of the heritage devolving from the father of the paternal great grandfather, on the grandson of his grandson ; for that has not regularly descended from ancestors*. But the heritage of the paternal great grandfather, successively devolving on his son and the rest until it reach the great grandson, has regularly descended ; in that case the rule of equal dominion vested in father and son must be argued :

* Regular descent extends only to the great grandson ; on failure of him, the estate devolves on the wife, &c. but, after some deviations, the table of successions reverts to the lineal kindred. T.

argued: however, when a great grandson, whose father and grandfather are both dead, succeeds to the estate of his paternal great grandfather, he and his son have equal dominion. There is no objection to explain “property left by the paternal grandfather,” an estate inherited in right of birth whereby the ancestor attains a region of bliss; for texts show, that a man reaches heaven by the birth of a son, of a son’s son, and of the son of that grandson (CIV and XI).

CIV.

YÁJNYAWALCYA:—Through a son, a son’s son, and the son of a grandson, the father or ancestor obtains *bliss in other worlds*, immortality, and heaven*.

Some thus explain the text quoted: world (*lóca*), immortality (*anantya*), heaven (*diva*), are different regions of joy so named; the region of bliss called *diva*, and the solar abode (XI), appear to be the same. But others say, world (*lóca*) intends a region of joy; by a son, a man attains that region; by a son’s son, he enjoys an endless abode there; and by the son of that grandson, he reaches the solar abode, a region of bliss superior to the preceding: by heaven (*diva*) is signified the solar abode; for the general term may be employed in a special sense: there is consequently no contradiction in these texts. This interpretation is unnoticed by other authors.

CV.

The *Mahábhárata*:—This young girl, though sole, will be more *estimable* than a hundred, for my lord will

* That is, by their oblations of cakes: therefore, they succeed to the deceased by a kind of purchase; and if the ancestor leave a son, and the son of another son, and the son’s son of a third son, they take equal shares of his estate, because they confer the benefit equally. This notion is the key to the whole Indian law of inheritance; and, for this reason, the law of obsequies, promulgated by MENU, must be carefully studied.

Note by Sir WILLIAM JONES.

will be relieved from regret, attaining the *blissful* world through a daughter's son.

Under the admission of the text, since a daughter's son inherits in right of birth, whereby his ancestor attains heaven, he and his son may have equal dominion in this case, as if the property had been inherited from the paternal grandfather. If this be alleged, the answer is, the term must be explained, according to the opinion of VIJNYÁNÉSWARA, property inherited in right of birth unattended by any other *requisite* cause. By birth alone property vests in sons and the rest; but it vests in a daughter's son and others by birth, upon failure of sons and the rest. According to other opinions also, it signifies property inherited in right of birth, independent of the general failure of sons and other *near* heirs. Whence is all this deduced? From plain reasoning: since the term "paternal grandfather" must comprehend the paternal great grandfather, and must exclude the maternal grandfather, this interpretation alone is admissible.

But others hold, that what is gained through no affinity or relation, is acquired by the party himself; what is gained through some affinity or relation, is *comprehended under the term* 'left by the grandfather:' in the case of a heritage devolving on a learned priest or a fellow student, there is no objection to admit the equal dominion of father and son. Or what is gained in right of birth, may alone be denoted by "property left by the grandfather:" else, should the father, through avarice or other motive, abandon the paternal estate, and occupy the abode of his maternal grandfather after the decease of that ancestor, the son, born after partition made by that father, when the estate is reduced by consumption, might be destitute of a maintenance. If it be asked, 'is not this remark equally applicable whether he have no property inherited from the paternal, or from the maternal, ancestor, but only property acquired by himself;' and if the objection, 'that the father has wilfully deprived his son of a maintenance, (since he abandoned his patrimony, coveting the wealth of his maternal grandfather, and since that patrimony has not been received by his son; and therefore the cases are dissimilar;) be repelled, because the grandson or other descendant might, if he pleased, take his share of the patrimony, under

under the authority of the subjoined text, “ Of wealth inherited
 “ from ancestors, even though not taken by the father, partition
 “ again extends to the fourth in descent ; this is a settled rule : ”
 and if it be inferred, ‘ that the father is guilty of the sin arising
 from the defalcation of *his son’s* maintenance, if he neglect, give
 away, or otherwise *abandon*, the estate of his own father ;’ they
 answer, the absolute defect of property inherited from a father or
 paternal ancestor, and the divestiture, by partition, of property
 which has been inherited from a maternal ancestor, are not simi-
 lar. Their opinion is liable to objection.

An observation should be here made. The participation of a
 son’s son, whose father is dead, and of the son’s grandson, whose
 father and grandfather are both deceased, is ordained by the texts
 of CĀTYĀYANA (LXXIX), when partition is made by a father.
 Hence partition by a grandfather, or great grandfather, is surely
 valid: and if the common ancestor have no surviving son, but
 have a son’s son, or a son of a grandson, partition may be made
 for his sake by the grandfather or great grandfather. It should not
 be objected, that, as a share is ordained for the wife, when parti-
 tion is made for the sake of the son, so it is directed that shares
 shall be given to grandsons and the rest : *and consequently* partition
 shall not be made for their sake, because sons alone are men-
 tioned in the text of YĀJNYAWALCYA (XXVI); and because
 the texts of CĀTYĀYANA may be solely applicable to such
 cases. Since a son, a son’s son, and the son of that grandson,
 equally benefit the ancestor, contributing by their birth to his
 attainment of heaven, there is no argument on which a disparity
 can be established : but no share is allotted, by any text, to the
 wife independent of the son ; and it is therefore fit to establish
 such an inference. A partition made by a maternal ancestor in
 favour of a daughter’s son and the rest is not legal ; but if any
 one make such a partition, in consequence of observing the prac-
 tice of distributions made by fathers, it is valid, provided all
 parties consent ; but not otherwise. This brief statement of the
 law may suffice.

CVI.

YĀJNYAWALCYA, after premising partition by a
 father :—One who is able *to earn a livelihood*, and
 claims

claims not *a share of the joint property*, may be disunited from the family, on giving him some trifle as a consideration to prevent future strife; or the portion of an eldest son may be allotted to the first born: or all *the sons* may have equal shares.

The text is introduced in the *Retnâcara* with this remark; ‘the legislator also propounds an exception to these two cases.’ Consequently, to a malevolent and indolent son, who is able, *but will not work*, a small portion, merely for the means of subsistence, shall be allotted; not a better portion *than the rest*, nor *even* an equal share, if his indolence be not authorized by the father: and this takes effect, even against the will of the parent; for it is ordained by the law. However, this maxim concerns property acquired by the sons, not that which has been acquired by the father or ancestor. The author of the *Pracâsa* expounds the text, ‘giving some trifle of small value, to prevent future strife with his sons, disunion of religious ceremonies, or partition, may be made.’ BHAVADÉVA, the *Mitâcsharâ*, and the rest, furnish the same exposition. The term (*anîhamâna*), which is explained malevolent in the preceding comment, more properly signifies not wanting the wealth of his father. How shall he find means of subsistence without partaking of the patrimony? therefore does the legislator add, “who is able;” that is, able to earn a livelihood without *receiving a share of the patrimony*. The context suggests this sense. The sons of this coheir might dispute the equity of the partition, if their father had been disunited from the family, with a trifle given to him; but, according to this last opinion, in which the verb *îb* is taken in its sense of ‘strive,’ if future contests be prevented by his voluntary acceptance of an inferior share, it is also prevented by his voluntary renunciation of his own right. This is liable to objection; for a fine to the king is denounced (CCCLXXVIII) against him who voluntarily accepts an inferior share *and afterwards disputes the partition*, not against him who voluntarily renounces his share *and afterwards revives his claim*. The last opinion must be therefore admitted, taking the text in its literal sense (*that some trifle must be given by way of share to prevent future strife*);

Strife): and in this case of partition by a father, should he give no share to any one son labouring under no legal disqualification, such as expulsion from his class or the like, it must be remembered that such partition is expressly declared invalid. This text must be also adduced in the case of partition made after the death of the father, for no other text has been delivered by YÁJNYAWALCYA; and the rule is propounded generally by MENU.

CVII.

MENU:—If any one of the brethren has a competence from his own occupation, and wants not the property *of his father*, he may debar himself from his own share, some trifle being given him as a consideration, *to prevent future strife*.

The text is thus expounded in the *Pracāśa*: should any one of undivided brothers, through laziness or knavery, make no exertion for gain, that is, strive not to improve the former stock, nor to acquire other wealth by agriculture or the like, he may be debarred from his share, or, *in other words*, excluded from participation in the wealth acquired by the rest of the brethren. But there is nothing to prevent his receiving a share of the original stock. Hence that shall be received by him. However, the legislator directs, that a trifle shall be given him for his maintenance: and that trifle shall be allotted out of the property acquired by his brothers. This allotment is founded on the near connexion between the wealth *formerly possessed and that now acquired*. But his not receiving a share proportionate to the whole estate is the consequence of his knavery. From the expression “able,” or *competent*, it follows, that one who is unable *to assist the common exertion for gain*, shall receive a share proportionate to the whole estate. HELAYUDHA expounds the text as follows; to him who takes not his own share, a trifle must be given to prevent future strife with his sons, and partition may *then* be made. The text of MENU is cited in the *Retnācara* with this remark, ‘the legislator declares the same.’ JÍMÚTAVÁHANA, RAGHUNANDANA and others concur in the same exposition; but they

they explain 'giving him some trifle for his maintenance,' giving him a handful of rice or the like. The meaning is, he who is able to subsist by his own occupation, and accepts not a share of the joint estate, but *on the contrary* renounces *his own right*, must be supplied, *when necessary*, by his brothers, out of the shares they have severally received. The text of NÁREDA bears the same import, says HELÁYUDHA quoted by MISRA.

CVIII.

NÁREDA :—He who, being employed in the affairs of the family, performs their business, *receiving no share in the original partition*, shall be supplied by his brethren with food, raiment, and beasts of burden, *to complete for him his full share*.

The commentator's meaning is this: if any one of the brethren, generously declining to receive his share when partition is made, afterwards claim it, the property shall not be thrown together for the purpose of making a new partition on his account, but his share shall be made up by the rest of the brethren contributing severally and proportionally a part of theirs: in this manner shall his share be allotted to him. Consequently, from the ambiguity of the phrase, the import of these texts should be applied to all *these different* cases. The author of the *Pracāśa*, and MISRA, think the right of filiation and the like so indefeasible that, if a share be not received when partition is made, it may be of course obtained by the party himself, or his son, choosing to claim it at a subsequent time. The opinion, delivered in the *Retnācara*, shall be hereafter elucidated.

One being employed for the benefit of his family and relations, performs their business, or work adapted to provide their subsistence, and takes not his share of the patrimony; if he subsequently claim his allotment, he shall be supplied with food, apparel, beasts of burden (mentioned merely by way of illustration), and other things, such as grain, silver, gold, ornaments, and the like; and a full share shall be thus allotted to him. The text is so explained by MISRA and the rest. But the
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author of the *Retnâcara* considers the expression, "employed in the affairs of the family," as intending a brother eminent by his good qualities. For instance ; being employed in providing for the maintenance of his brethren, their families and his own, he performs that business ; he conducts agriculture, or transacts purchase and sale or the like ; he shall therefore be advanced by the rest of the brethren who perform not such work : consequently, on account of his virtue in exerting himself for the maintenance of the family, a superior allotment of food, clothes, beasts of burden and the like shall be given to him. JÍMÚTAVÁHANA and others concur in this exposition. As a better allotment of food, clothes and the like shall be given to him who labours for the support of the united family, so a worse allotment shall be given to that brother who does not make any exertion to support it, though able to do so : and when partition is made, a greater or better share must be given to him by whose exertions the members of the family live ; and he who is able, but does not labour for their support, shall be disunited from the family, giving him a maintenance only, as directed by MENU (CVII). The same rule is applicable to the case of partition made by a father. Such is the opinion delivered in the *Retnâcara* : and this we hold reasonable ; for VYÁSA praises them who make exertions *for the behoof of others*.

CIX.

VYÁSA :—Useful is the life of him, by whom, while he survives, priests and kinsmen subsist. Who is there that does not live for his own benefit ?

Partition with sons begotten on a wife by an appointed kinsman, and other adopted sons, will be considered under the title of Partition after the Death of the Father. If an acquisition be made through the co-operation of all the brethren with their father, an unequal distribution should not be made in consideration of filial piety, of a large family to maintain, and the like, nor in right of seniority and so forth ; as has been already noticed. Here a question occurs for discussion : if there be four brothers, the father of whom is living, and who are all skilled

in their duties ; but one acquires a piece of land, acting under his father's instructions ; what form of distribution shall in this case be followed ? Does that land belong to him alone, because he made the acquisition ? or is the acquisition considered as made by the father, because he partly contributed to it ; and shall all the brethren therefore partake of it ? In reply to this question it is asked, was this land or other property purchased, or received as a present, or otherwise acquired ? Either the purchase was made with the father's sanction, on a reference to him in words to the following effect, at the time when the bargain was proposed, " this man offers to sell me this property ; what should be done ? " or else the purchase or other acquisition was made by the son receiving express orders from his father to effect it. In the first case, the price being paid out of his own several property ; or, in the case of a present received, which was not intended for the father, the donor not having said, " deliver this to thy father, " the land *so purchased or received* is the sole property of the son. In the second case, it belongs to the father ; but if the price were paid out of the son's own several property, and he merely termed it the act of his father, through the ingenuousness of his disposition, the son shall have a share ; and it shall be proportionate to the wealth invested. But the personal labour of the son belongs to the father ; for the son is his representative, and subject to his power (Book II, Chap. iv, V. 8). Let it not be argued that the son can have no several property, since his father is owner even of that which is acquired by him (Book III, Chap. i, V. 52) : how then should he have a share of the acquisition ? That text is considered by JÍMÚTAVÁHANA, and the rest, as merely intending that a son, whose father is living, is not his own master even in respect of his own acquired wealth. For, if sons and the rest have not property in that which they earn, there could not be an acquisition made by them ; since acquisition signifies such an act as becomes a cause of property *vested in the agent*. Else, the father having property in that which was acquired by his son during his lifetime without using the patrimony, all the brethren would have equal shares after his demise. It would follow, that sons and the rest would lose all religious rites, which must be defrayed with money ; since the father's property would be revived in that which he himself

himself gave to his sons. Consequently the sacrifice with the moon-plant could not have been accomplished, as recorded in the *Mahábhārata*, by BHÚRÍŚRAVA during the life of VÁHLÍCA, nor other ceremonies by other persons during the life of their father. VÁCHESPATI BHATTÁCHÁRYA concurs in this opinion, and in the text of CÁTYÁYANA (Book I, V. 8), which forbids the lending of money to women and the rest, their inability to acquire wealth is the motive of the precept; accordingly children or minors, not sons, are there mentioned.

But others argue from the text which expressly declares the right of a father and the rest to wealth acquired by a son *and others* (Book III, Chap. i, V. 52), and from the maxim 'what is clear shall not be explained by inductions from other premisses,' that a father and the rest have ownership: a right, proceeding from acquisition, *first* vests in the sons; afterwards, property also vests in the father by reason of the son's right, which is subservient to the father's. But the ownership of the son is not divested, for a text declares property common to the married couple; and there is no inconsistency in the contemporary property of father and son, any more than in the property of a wife while her husband lives. The absolute right and independent power of a wife over that which is given to her by her husband, and of a son over that which is given to him by his father, must be established; for texts declare the several property of women; *and it must be inferred* in other cases, from parity of reasoning, *since* the religious ceremonies of sons and the rest must be defrayed. After the death of the father, another *coheir* shall receive a share of such property; as appears from the expression, "with supplies from the common estate," in the text of VYÁSA (CX): for that may relate to an acquisition made while the father was living, as well as to one made after his decease.

CX.

VYÁSA:—If a coheir gain horses, elephants, cars, or weapons of any sort, by his own valour or the like, but with supplies from the common estate, his brethren, *or paternal uncles*, shall be sharers of it:

2. A double sum is ordained for him ; and the other parceners must share alike.

As a son has a share of wealth acquired by a father, so shall a father *partake* of wealth acquired by his son. Even according to your opinion, the independent power of a son, after partition, over his whole property, as intimated by CÁTYÁYANA (CIII), must be acknowledged upon *arguments obvious to common sense*. The word "son," in that text, must signify one with whom partition has not been made. Or the son's title causing property to vest in the father, is again revived in regard to wealth given to him by his father. On this point no difference of opinion appears in the *Retnácara* and other works : for it is said in the *Retnácara*, in the chapter on the Emancipation of Slaves, 'the master has no power over property given by him, through favour, to his slave;' and the texts of MENU and others (Book III, Chap. I, V. lii 2, and liii 2,) are cited *to show the reverse in other cases*. MÍRSA concurs in that exposition. Since the ownership of a wife in that kind of wealth which is called the property of women, is propounded by a special text, her husband alone is owner of every other kind of property. The prohibition of lending any thing to women and the rest, as promulgated by CÁTYÁYANA under the title of Loans (Book I, V. 8,) is founded on their want of property. However "infant" *there* denotes a child whose father is deceased, it is merely an instance comprehending a son whose father is living ; as has been already mentioned. They thus expound the law.

A father has property in his son, as in grain or the like, because he begot that son. A husband has property in his wife, as the receiver of a present has in grain, cattle, or the like, because she was given to him by the person who begot her. A master has property in his slave in right of purchase or the like. Hence, under the rule, that 'whatever is acquired by a man himself belongs to him,' a father has property in that which is acquired by his son and so forth. But, in the case of female property received through favour and so forth, a stranger may have full dominion over it, with the assent of the woman's husband. Yet in the case of female property given by the *woman's* father,
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we do not, they say, suppose a right different from *that which is established by the law*.

If it be asked, by way of objection, how can the debts be paid when partition has been made during the life of the father? the answer is, they who enjoy shares must discharge the debts. Here a question occurs for discussion. The father has two shares of property left by the paternal grandfather, and the sons have one share each; the father shall *therefore* sustain two parts of the debt, and the sons one part each: this is indisputable in the case of a debt contracted by the father, but may be disputed in the case of a debt incurred by the paternal grandfather; for the payment by the son is productive of no benefit to him, and payment by the father alone is beneficial.

CXI.

NÁREDA:—What remains of the paternal estate, out of which the debts of the father have been paid to those to whom payment had been promised *by him*, shall be divided among the brothers; care being taken that the father continue not a debtor.

Let it not be argued, that, because this text shows it necessary to pay the debts of the father when partition is made among brothers after his death, surely his debts must be paid when partition is made in his life-time: and since it appears from the term “*successively due*,” in the text of NÁREDA, which has been cited under the title of Loans, (Book I, V. 198,) that the debt of the grandfather first devolves on the father, and afterwards on the son; and since it must necessarily be paid by the grandson, being due by his father, the grandsons shall therefore contribute one share without interest (Book I, V. clxvii 2), and the son of the original debtor two shares with interest. From the form of the phrase, “out of which the debts have been paid,” it appears that they must be paid previous to partition. Now they cannot be then paid by the grandson; for as yet he has no property, and he is not the person who makes the distribution: it is therefore proper that the son should make the partition, after first discharging

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ing the debts with interest. Again ; when partition is made by a father, a share is allotted to the grandson, whose own father is dead ; but since the law does not make him liable for the debt of his paternal great grandfather, as well as for that of his father, it shall not be discharged by him. *But* the father must likewise discharge the debt of his grandfather ; for it ought to have been paid in the first instance by the grandfather. But if he be then unable to discharge it, or the term be yet incomplete, let him require from his sons and grandsons an immediate promise of payment : the debt of a paternal great grandfather, or remoter ancestor, must be *subsequently* discharged in consequence of such promise. In like manner, a promise of paying interest on the debt of the paternal grandfather should be required. But if there be no property left by the paternal grandfather, and only property acquired by the father, then, should the father, making a partition, reserve the greatest part for himself, and give an inconsiderable allotment to his sons, how shall the debts of the father and grandfather be apportioned ? If he divide the estate at his pleasure, then, should the father reserve the greatest part of his fortune burdened with a small part of the debts, his sons will be distressed ; or if he distribute his fortune like property inherited from the grandfather, still the sons will be distressed. Therefore the matter must be thus reconciled : the father, spontaneously discharging the whole debt, may distribute the remainder among his sons at his pleasure. But if the debts exceed the property, let him give some wealth to the sons, and assess the debts in proportion thereto. However, sons should, without evasion, voluntarily bear their father's burden. But if the father fraudulently or truly say, " my debts exceed my estate, how then should I give " shares to my sons ? " and his sons reply, " give us shares of the " estate, burdened with proportionate shares of the debts ; " there is no law to authorize the independence of sons : however, the matter should be adjusted by the impartial decision of arbitrators. This is founded on the reason of the law. If there be property of both kinds, acquired by the father, and inherited from the grandfather, and also debts of both sorts, then the debts incurred by the father or grandfather shall be distributed in the same proportions with the property : the fortune of the father, and the debts with which it is burdened, shall be treated as the estate of
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the father; the wealth left by the grandfather, and the debts charged thereon, shall be treated as the estate of the grandfather. This has been sufficiently discussed.

How can partition, made during the life of the father, be called inheritance (*dāyabhāga*)? When inheritance is explained 'the heritage which is shared,' the portion given by a father in his life-time being received in right of affinity, and heritage signifying wealth held as property in right of affinity after the property of the former owner has expired, and that being here connected with partition, the description is unexceptionable. According to the opinion, in which inheritance is explained partition of heritage, since it only becomes heritage by the act of partition, heritage is here a subject effected by action*, as in the example "he makes a pot." But, according to the opinion, in which inheritance is explained 'participation or ownership of heritage,' ownership being fully vested in sons and the rest after partition, the wealth is heritage; inheritance, consisting in ownership predicated of them, may be predicated of *heirs* as far as the fourth in descent. This has been sufficiently explained.

CHAP.

* *Subject*, in philosophical grammar, is of three kinds:

prāpya, an effect produced by conjunction, disjunction, and the like, *without altering the form of the substance*; ex. g. visits the city.

vicārya, when the substance remains, but its form is changed: ex. g. makes a bracelet of gold.

nirvartya, when an effect is produced by action, where the former shape of the substance is not considered: ex. g. makes a pot or a carpet. T.

CHAP. III.

ON

PARTITION

AMONG BROTHERS.

AFTER the natural or civil death of the father, either let the sons live together, or let them divide the paternal estate. This alternative is propounded by MENU (XVIII.) Let the eldest son, in the mode above mentioned (Chap. I, Sect. 1.), undertake his father's charge, and support all the brethren, and let them thus live together; or let them live apart: and that living apart is adopted for the sake of religious duties; for, by the performance of all rites, constant, occasional, and the rest, out of several property, the consequent merit is separate, and shared by no other. A separation of abodes is therefore morally right, not caused merely by the perverseness of coheirs. May not coparceners severally perform religious rites? No; for it is a certain rule, that the intention of the law is fulfilled by once performing a single religious rite, which is defrayed out of the common property. Since it does not repeatedly occur, it is customary to perform it once only: and the sons of a king, not being separately consecrated to the regal office, unless partition be made, are not entitled to perform the sacrifice called *Râjasûya* and the like, which must be done by a monarch. As for the duty of voluntary gifts and so forth, religious offices may be multiplied, even without partition, by the repeated performance of that duty; but constant and occasional rites are fully performed by a single celebration, as has been already mentioned. Still however, in some circumstances,

circumstances, as in that of the *putréṣṭi* sacrifice for the sake of obtaining offspring, religious duties are multiplied by the separate performance of religious ceremonies, even without partition.

This partition should be made with mutual kindness; for unkindness is censured in the *Herivaṁśa*.

CXII.

The *Herivaṁśa*:—No doubt, INDRA! the mutual strife of brothers and of friends gladdens their enemies.

It is requisite that the mother be also dead, before partition can be made by brothers after the decease of their father.

CXIII.

VYĀSA:—For brothers a common abode is ordained so long as both their parents live; but, by making a partition after the death of their parents, their religious duties are multiplied.

If it be argued, that because brothers are enjoined to live together while their father and mother both survive, partition is suggested when one of them, namely the father, dies: that is denied; for it is a rule, that what occurs first or last in the apposition called *dwandwa* is accepted; each is meant. The mother and father are both suggested by the word “parents” (*pitrau*), a term formed by the omission of one word (*mātri*), which is understood in this expression; and each of the terms suggested relate to the word “live:” the phrase is therefore explained, ‘so long as the mother lives, and so long as the father survives.’ Else partition would be directed by this text, when the mother alone was dead. The text of VĀJNYAWALCYA must be explained as signifying that partition may be made after the death of both parents, since it has the same import with the text of VYĀSA.

CXIV.

CXIV.

YÁJNYAWALCYA :—Let the sons, after the death of their parents, equally share the assets, and equally pay the debts of the deceased.

Let it not be argued, that, on the contrary, sons are enjoined to live together while both their parents survive, but may divide the estate when either of them dies. SANC'HA expressly declares, that partition cannot be made while either of them survives (XVII).

CXV.

VRĪHASPATI :—On failure of both their parents, partition among brothers is ordained.

That is, on failure of their father and of their mother. The sense is the same in the text of VYÁSA. While the father lives, let no partition be made, because sons have not power over his effects ; but why should not partition of the paternal estate be made while the mother lives ? To this some lawyers, adopting the opinion of JÍMÚTAVÁHANA, reply ; ' partition of the paternal estate, while the mother lives, is not morally right.' Consequently the prohibition against dividing the patrimony while the mother lives is a *moral precept*, like that against eating flesh-meat on the eighth day of the lunar month, and so forth. Hence the sin of infringing a prohibition is the consequence of making such a partition. Or an exception is suggested by this text : it is not morally right ; that is, it does not multiply separate religious duties ; they are not separately multiplied while the mother lives. Consequently the sense of the text (XVII) is deduced from what has preceded : sons are not independent, that is, they are not entitled to make a partition and so forth ; they are not independent while their relation to a surviving mother subsists. Such a partition is invalid in respect of religious duties, and is only valid in respect of property. Hence, while the mother lives, all participate in every religious rite, even though separately performed. Accordingly, as partition is made while the father lives with his consent, so, reasoning from analogy,

analogy, while the mother survives, partition must be made with her consent. But, in the one case, since the father has dominion over the estate and over his sons, he shall have a double share; in the other case, since the mother has dominion over the son alone, she shall have one share only: and hence the father shall have more than a double share of his own acquired wealth; but property acquired by the mother shall not be divided, since the law does not ordain a partition of it. The text of CĀTY-ĀYANA (Book II, Chap. iv, V. xv 5) shows, that sons are not their own masters while their mother lives. Consequently, after the death of the father, two periods occur for partition, when the mother dies, or, *while living*, when she consents. But, while the father lives, since he has dominion over all, partition shall be made by his choice alone; the mother's assent is not required: and those who contend for partition of property inherited from the paternal grandfather, at the option of the sons, think that partition is made by the choice of the father alone, who is induced thereto by the wish *or request* of his sons; for the father is the person who makes the distribution: the text of HĀRITA* denies partition without the father's consent; and sons have not immediately such independent power as can enable them to perfect the act *of partition* without reference to another person. Accordingly the mother's assent is not required for partition by a father.

But some lawyers argue from the text which declares property common to the married couple (CCCCXV), that the mother's property, thereby proved, subsists after the father's death, since there is no argument to prove the divestiture of the mother's property, although the father's be annulled by his demise; consequently sons cannot divide property which is held in common with their mother, without her consent. It should not be objected, that partition may be made with the consent of any one owner, even without the acquiescence of the mother, as it may without the consent of a brother. The mother having dominion over the estate and over her son, but he having dominion over the estate only, she has greater authority. But the same observation is not applicable to an elder brother; for he is not highly venerable, *like a mother*. However, it is not customary to

* The text which is here quoted has been attributed to SANC'HĀ (V. 17.).

to make a distribution, by which the eldest brother would be aggrieved ; or, *if partition be made*, the portion of an elder son is allotted to him as a token of respect. Is it not declared in a text cited by RAGHUNANDANA and VÁCHESPATI BHATTÁCHÁRYA (Book II, Chap. iv, V. xv 1), that the younger brothers are not their own masters while the eldest brother lives, and partition cannot therefore be made without his consent ? It cannot be argued that the text which has been quoted is intended to forbid a gift or alienation by others while there is an eldest son standing in the place of the father, as directed by MENU (IX) ; for there is no argument on which the text can be restricted to that limited sense. To the question proposed the answer is, No ; for the text which has been quoted must of course be explained as relating to an eldest brother, who bears the burthen of supporting the family, since the law propounded by NÁREDA (XVI) suggests partition among brothers who are unwilling to live together ; and the living together or separately appears from the text of MENU (XVIII), and from many other laws, to be the act of all ; and since the eldest has no dominion over his younger brothers. The expression, “seniority is founded on virtue or on age” (Book II. Chap. iv, V. 16), is not inconsistent with the phrase, “or even the youngest brother if he be capable of business” (XVI).

VÁCHESPATI BHATTÁCHÁRYA and many other authors do not concede to this opinion ; for they do not acknowledge the wife's property in her husband's estate, since she made not the acquisition. But ultimately there is no variance. No ordinance exists, to prove that partition shall not be made by grandsons while the wife of their paternal grandfather survives. But some lawyers infer, that sons are not independent in respect of their mother's property while she lives, but do not think them dependent in regard of property left by the father : as sons have an interest in, but no independent power over, wealth acquired by their father, while he lives ; so have they none over wealth acquired by their mother, so long as she survives. These lawyers, though they copy VIJNYÁNÉSWARA, are not now followed. This point has been sufficiently explained.

VRÍHASPATI has propounded two forms of partition, with and without a deducted allotment (XXX). That has been already expounded ;

expounded: however, the expression, "with attention to priority of birth," is there a mere instance of a general sense, whereby the greater share of one who is pre-eminent by his good qualities or the like is also suggested, as already mentioned.

CXVI.

VRĪHASPATI:—All the sons shall succeed to their father's estate, as is ordained; but he who is distinguished by science and good conduct, shall take a greater share than the rest:

2. Progenitors become truly the parents of a son, through him whose fame is spread in this world, for science, skill in arts, courage, or wealth, and for knowledge, liberality, and virtuous actions.

"Science;" study of the *Vēdas* and other branches of sacred literature: and that is peculiar to the three *first* classes, the *Brāhmaṇa* and the rest. "Skill in arts;" knowledge of mechanical trades; and that is peculiar to the fourth tribe and to mixed classes. "Courage;" valour: this appertains to the military class. "Wealth;" riches: this alludes to the commercial tribe, not to the sacrificing priest, or to the *Sūdra*; for riches are censured *as a pursuit* of these classes. "Knowledge;" the knowledge of GOD: this may belong to men of all classes by the power of destiny. "Liberality;" the meaning is obvious: it may relate to men of all classes. "Virtuous actions;" such as are followed by purity: or (reading *crayēshu* instead of *criyāsu*) the purchase of commodities for traffick; meaning also the sale of them; and this appertains to the commercial tribe. By the connective particle, other duties enjoined to the several classes are comprehended *in the text*. "Progenitors become truly the parents of a son, through him, &c.;" it is therefore proper that a most excellent share should be allotted to him.

Wealth is incidentally mentioned in this text; or it is intended to show, that a superior share shall be allotted to one who is able to acquire riches. "Father of a son;" the word,

word, from its etymology*, signifies related to an excellent son.

When partition is made among sons, an equal share must be allotted to the mother with her sons, and to the wives of the paternal grandfather with their grandsons; as has been already mentioned. But in the case of a *Sūdra*, it will be declared, that no deducted allotment shall be given *to the first born*.

RAGHUNANDANA.

This is grounded on the text of MENU (LXVI). It may be objected, that, if the deducted allotment, being included in the shares, render them unequal, this would contradict the observation of JIMÚTÁVAHANA and others, in expounding the text of MENU (XXIX), that, 'unequal partition on account of filial piety or the like is forbidden, not the deducted allotment, which is no share.' But VÁCHESPATI-BHATTÁCHÁRYA holds, that 'the deduction in favour of the eldest by birth is denied to the servile class, not the deduction in favour of one who is pre-eminent by his good qualities.' The text will be otherwise expounded under the title of Partition among Sons by women of the four classes. The case of him who, through laziness or the like, refuses to labour for the support of the family, or of one who, being very able to earn a livelihood, supports his own family without using the paternal estate, has been already considered.

The texts of CÁTYÁYANA (LXXIX 1 and 2) have been explained in the preceding chapter. The first verse relates to partition made by the father. The second expresses, that a nephew, whose own father is dead, shall receive a share from his paternal uncle. The condition, "provided he had received no fortune from his grandfather," must be extended to this case. Consequently, if the grandsons, having received allotments from the paternal grandfather in his life-time, reside apart, and their uncles remain united with their own father, in that case, when these make a second partition, the grandsons shall receive no share. However, grandsons are entitled to obtain partition of that property which had belonged to their paternal grandfather; but the

* The etymology is thus stated in the text; *Putrin* = *putra*, son, + *in*, bearing the same sense with *matup* (or *mat*), a termination denoting excellence.

the fortune previously allotted to them bars a second partition of the same estate. The text of YÁJNYAWALKYA (LXXVIII) has the same import with the last hemistich of the second verse ; and the third (LXXIX 3) relates to the same subject.

The text of DÉVALA (LXXXI) is thus explained in the *Retnācara* : ‘ partition among undivided parceners, and a second ‘ partition among divided relatives living together after re-union, ‘ extends to the brother, to his son, and to the son of that son ; ‘ it stops with the son of that grandson, being fourth in descent ‘ *from the common ancestor.*’ “ Fourth,” counted from the owner of the estate *inclusively*, is preceded by the inseparable particle *ān* (or *ā*), which denotes ‘ limit of space or time.’ Consequently, if brethren live together after the death of their father, a brother shall receive a share when partition is subsequently made ; or should one of the brothers die before his father, his son shall take his share ; should he also die before his grandfather, his son shall receive the share : and if this last also be dead, his son shall not take the allotment ; for he is more remote than the fourth in descent. This rule is applicable where partition had not been made ; and “ second ” does not relate to this case. Again : two brothers have re-united themselves ; afterwards their sons, grandsons, and great grandsons, die : in that case the son of the great grandson shall not take a share. In the gloss of the *Retnācara*, it is said, ‘ extends to the brother, to his son, &c. :’ brother denotes the son of the re-united heir, or son of the uncle ; for it is there remarked on the text of DÉVALA (LXXXII), that ‘ it is applicable, when, partition not having been made, property, not enjoyed by one coheir, is solely enjoyed by another residing in the same province.’ For the brothers are separated ; but some property remaining undivided, is successively enjoyed by one brother, and by his son and other descendants, and is not enjoyed by the other nor by his son and descendants : afterwards, when partition is claimed, a considerable lapse of time intervening, this text regulates the decision. Consequently, if it be claimed by the brother, by his son, by the son of that son, or by the son of this grandson, partition shall take place ; but if it be claimed by the son of that great grandson, partition shall not be made. However, property vests in the occupant, because the right of the other is annulled by adverse possession :
accordingly

accordingly the text is pertinent ; “ Except on failure of kinsmen allied by the funeral cake, the claim of kinsmen allied by family only is not valid.” Here affinity by the funeral cake is referred to the owner of the property ; consequently it is not extended to the fifth in descent : and this rule is applicable when the party resided in the same province ; but if he resided in a foreign country, property is only de vested by usufruct after the seventh generation, as will be mentioned.

But some expound the text of DÉVALA (LXXXI), ‘ among undivided parceners (meaning heirs who are re-united, and those between whom partition has not taken place), and among divided relatives (or those between whom partition has been made), who live together, that is, in the same country, a second distribution, or partition made after re-union, and a division of property, remaining in parcenary when the *first* distribution was made, and *solely* enjoyed by one heir, extends to the fourth in descent : but if they do not live together, *that is, in the same country*, it extends to the seventh generation, as will be mentioned.’ They expound the subsequent text (LXXXII), ‘ so far, that is, as far as the fourth in descent, relatives, or persons sprung from the same family, are *sapindas*, or connected by the mutual relation of giving and receiving the funeral cake. Beyond him, namely the fourth in descent, the funeral oblation is rescinded ; the relation by the funeral cake is cut off. What follows from these premises ? The legislator adds, Sages admit that succession follows the funeral oblation ; if there be a connexion by the funeral cake, participation in hereditary property is acknowledged ; that is, inheritance takes effect if there be such a connexion. This is the sole purport of the phrase.’ Is it not superfluous to say, because property is vested in the occupant, the fifth in descent shall not partake of the heritage ; for he *of course* is not entitled to inherit, since the right of the fourth alone is propounded ? It should not be argued, that the text concerns the case where the deaths happen regularly, the owner dying first, and his son afterward. Were it so, “ undivided ” would be a superfluous term ; for, in the case of undivided coheirs, should successive persons die regularly, (the son after the father,) participation may extend even to the hundredth generation. It is not ordained that partition among the descendants
of

of partners in commerce shall not extend to the fifth or remoter descendant. To the question proposed, it is answered; in the expression "divided heirs," the regular decease of the father before the son is supposed; but in the phrase, "undivided parceners," the premature death of sons before their fathers is supposed. Or this law may not relate to re-union; for the text of BAUDHAYANA (III) establishes the succession of the sons of a re-united heir; and since they are not divided, it is also proved by this circumstance. Consequently, by mentioning partition, property is declared. For instance, the great grandson of an undivided coheir shall share with the brother of his paternal great grandfather; that is, any property which had remained in common, shall be shared by the great grandson of a divided heir. This coincides with the text of CĀTYĀYANA.

But others expound the text, 'among undivided *parceners*, 'and *among* divided heirs living together after re-union, partition 'extends to the great grandson of the owner.' Or, among heirs undivided from the day of their birth, or living together re-united after a partition, &c. The re-union of partners in trade is excluded. It follows, therefore, that re-union is only affirmed of brothers and the rest. Among them, a second distribution of heritage extends to the great grandson. The meaning of the text is thus obvious. A subsequent verse (LXXXII) declares generally, that a great grandson shall succeed to the heritage.

No author has inserted the text of CĀTYĀYANA (LXXIX 1) under the title of partition made by a father. But on the reading, "should a son die (*mr̥tē putrē*), the agent in the sentence, or person by whom shares are allotted, is presented in answer to the question, son of whom? as in the phrase, he behaves with piety towards his mother, and in similar forms of expression; now by thus declaring, that, should the son of him who makes the partition be dead, the son of that son shall partake of the property, it surely follows that this relates to partition made by a father. Accordingly the expressions "receive his share" and so forth, are not unmeaning *nor inaccurate*. But on the reading of MISRA (*nijē pr̥tē*), which he expounds, 'when the brother himself dies,' the text does not seem to regard partition made by a father. As in the phrase, when *the principal* himself is absent let the son support the family, "himself" signifies the person

who ought to support it ; so, in this phrase, “ himself ” signifies the person who should regularly succeed to the estate : by so explaining that reading, the text must surely relate to partition made by a father : and accordingly the expressions “ receive a share,” and so forth, cannot be unmeaning. But “ undivided ” must signify one with whom partition has not been made ; for the brother’s share is implied. However, this text must be adduced, as well when the proprietor is living but his son dead, as when both the proprietor and his son are living but the son of that son dead, or when these are all living but the son of that grandson dead. The law may be thus concisely expounded.

CXVII.

VASÍSHT’HA :—A share of the heritage with the brothers shall be allotted to the widows who have no offspring, but are supposed pregnant, *to be held by them* until they severally bear sons.

Since women receive no share when partition is made among brothers, the text appears unmeaning. For this reason CHANDÉSWARA proposes the subjoined interpretation : “ widows ” here signify wives of deceased brothers. If they be supposed likely to bear sons, a share must be also allotted to them : but if no son be produced, that share belongs to the brothers ; and the widows must be maintained by them. Consequently shares are only allotted to widows for the behoof of their sons. The brothers succeed to the share of a childless coheir, although he leave a wife ; and they must support her : this follows evidently *from the exposition of the text*. Again ; on a cursory view this appears inconsistent with the text cited in another place (CCCXCVIII). It is thus reconciled by JÍMÚTAVÁHANA and others : a wife equal in class succeeds to the estate of one who leaves no son ; but a wife of unequal class shall be supported *by the collateral heirs*. Others reconcile the apparent difficulty in another mode. The whole subject will be discussed under the title of Succession to the estate of one who leaves no male issue.

It

It should be here noticed, that a share must also be allotted, from parity of reasoning, to a stepmother who is supposed likely to bear a son : and such is the consistent purport of the text, as explained by JÍMUTA VÁHANA and the rest. But, according to those who contend for the right of the stepmother to receive a share when partition is made among brothers, the phrase, “ until she bear a son,” would be unmeaning. To this it is answered, an *equal* share with the brothers must be set apart until she bear a son ; but if no son be produced, that share shall be taken by the brothers. But the allotment of the stepmother, being directed by another text, shall not be resumed, even though she bear no son. Others consider this text as relating to the son begotten on an appointed wife by a kinsman. This will be explained in its place.

This partition can only be made after discharging the father's debts (CXI). RAGHUNANDANA and others expound the term which occurs in that text (CXI), ‘ to those to whom payment had been promised by the father.’ But the debts of the paternal grandfather must be discharged previous to partition of wealth inherited from him. If there be no property acquired by the father, and the whole estate were left by the paternal grandfather, still, since it became the property of the father, his debts must be paid before any partition can take place : and if the paternal grandfather should leave no property, his debts must be *nevertheless* discharged ; and that before partition : else the subsequent arrangements would be difficult. In fact, debts of the paternal grandfather become debts of the father ; they are chargeable on him in the first place ; next on his son, as has been already noticed : but the great grandson of the original debtor shall not be compelled to pay the debts, unless he take the assets.

In what circumstances is he considered as holding the assets ? Is it only when he becomes the *immediate* heir of his ancestor, who has survived his own son and grandson ? or *is he* likewise considered as such, when the son succeeded to the estate on the death of the proprietor, and after him the grandson ; and on his demise the great grandson ? The answer is, when the estate of the ancestor passes successively to his son, grandson, and great grandson, this last is not the *immediate* heir of his great grandfather, but of his own father. Else, a man succeeding his father in the possession of property which had been conferred on him

by any person whomsoever, would, *with equal propriety*, be considered as holding assets of the donor. Although the son of a donee be not considered as holding assets of the donor, because his title, *being derived from succession*, is very different from one which is held under a gift, why should not a man be considered as holding assets of the donor, if he himself be the person on whom the property was bestowed? The term being limited to succession in right of affinity or relation, for the sake of removing this apparent difficulty, he cannot in this case be considered as successor to the estate of his paternal great grandfather, for he succeeds in right of his relation, as son, to his own father. Consequently he who succeeds to the estate of another in right of his relation to him, is considered as holding assets of that person. A brother's grandson inherits, in right of his relation to his great grandfather, an estate devolving on him from one who leaves no heir within the degree of brother's son: must not he pay the debts of his paternal great grandfather? He does not succeed solely in right of his relation to his paternal great grandfather; but as great grandson of the proprietor's father. There is consequently no difficulty. It would be vain to pursue minute disquisitions.

It should not be argued, that because the debt was successively due from the son and grandson *of the original debtor*, it therefore becomes, *in respect of the great grandson*, a debt of his father and grandfather. A debt is said to become successively due *from a son and grandson*, merely to show that the debt of the paternal grandfather must be paid out of the property of the father: else even the debt of the paternal grandfather would be payable with interest. Nor should it be objected, that the law which directs the payment of the grandfather's debt without interest, would on this supposition become nugatory. When a debt has been contracted after the death of the son, the grandfather subsequently dying, his debt cannot devolve on his son, because that son is not living: the text which directs payment without interest, might be pertinent, as relative to this case only. Nor should it be said this is admissible. It is resisted by common sense.—Therefore, “paternal” signifies relating or appertaining to the father; and the similar derivative from grandfather bears a similar sense: that relation consists in the producing *or incurring of the debt*; but in respect of the great grandfather there is no difficulty.

culty, for, although his debt devolve on his son and grandson, it was not incurred by them.

RAGHUNANDANA and others remark on a phrase in the text above cited (CXI), "care being taken that the father continue not a debtor," that if they cannot *immediately pay the debt*, they must promise the creditor to pay it *at a subsequent time* in proportional shares. That promise will not run in this form, "this debt shall be discharged by me." Were it so, since the father would not be declared exonerated from the debt, it could not be said, "care being taken that he continue not a debtor." Consequently the debt must be undertaken in proportion to the share received out of the heritage; for instance, if the debt of the father amount to a hundred *suvernas*, *four brothers must severally declare*, "twenty-five *suvernas* thereof constitute a debt due from me." Were it so, would not a son be liable to pay interest anew on such a debt, although it had already accumulated to its highest limit; for the rate of interest ordained by the law, when it has not been *expressly* stipulated, cannot be barred? It should not be argued, that it is not a debt in the rigorous sense of the term, because there appears no pecuniary transaction; and for this reason no interest is paid. Were it so, no interest would be paid on the principal sum, *although it had not accumulated to its highest limit*. To the question proposed the answer is, it remains the same debt after the promise of payment in like manner as a debt sold: hence interest does not recommence. As in the case of a debt sold, should it happen to remain unpaid, the debtor incurs the sinful taint arising from the non-payment of a debt due to a person of the buyer's class, not that which arises from the non-payment of a debt due to a person of the seller's tribe; and, a preference being given in the order of the classes when debts are discharged, as the preference follows the tribe of the buyer, not that of the seller; so in this case likewise, should the debt happen to remain unpaid, the son alone falls to a region of torment, not his father. Again; if it be not discharged by him, it must be paid by the son's son; for it was the debt of his grandfather. But if it do not successively devolve in this manner, it shall not be discharged by the son's grandson against his will.

It should be here remarked, that he who is averse from the performance of his father's obsequies, shall not obtain a share of
the

the inheritance (CCCXX); if land be assigned for the father's *śrāddha*, by the unanimous consent of all the parceners, expressed in this form, "this land is set apart for the paternal *śrāddha*," such land must not be divided so long as they possess any means of support: this practice subsists in some countries.

CXVIII.

CĀTYĀYANA:—The house, arable land, and quadrupeds, which are discovered *to have been the property of the deceased*, must be equally divided: if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law.

The term is explained "ordeal" by RAGHUNANDANA.

CXIX.

VRĪHASPATI:—Thus MENU declared, that household utensils, beasts of burden, weapons, milch cattle, ornaments, and slaves, must be divided, when discovered, among the heirs; and that, if effects are *justly suspected to be hidden*, a discovery must be obtained by the *cōsha*.

The *cōsha*, says RAGHUNANDANA, is a particular form of ordeal. Lawyers explain it ordeal, by touching water in which a principal idol has been washed. More on this subject may be found under the title of Trial by Ordeal.

On the death of the father, the mother has a claim to an equal share with her own sons; their mothers (stepmothers), or his mothers (wives of the paternal grandfather), *for the term is variously explained*, take the same allotment; and the unmarried daughters, each a fourth of a share (LXXXV). Mothers, says VISHNU (LXXXVI), take allotments proportionate to the shares of sons, and so do unmarried daughters. Since this coincides with the text of VRĪHASPATI (LXXXV), therefore, according to the shares allotted to their own brothers, unmarried daughters

* This text is attributed to CĀTYĀYANA in some Digests, and is there read, "Thus BHRI'GU" instead of "Thus MENU." T.

daughters shall take a fourth ; they take a quarter of the share allotted to their own brothers : such is the exposition delivered in the *Retnâcara*. But to her who has no brother, such a share must be given as ought regularly to be allotted *if she had one* : a quarter of the share, which would be allotted to a son of the same class with her mother, shall be computed and given to the damsel for the purpose of defraying her *nuptial* ceremony : such is the determinate sense of the text. The meaning is, that the fourth part *of a share* shall be given out of the whole estate. A fourth part being mentioned in several texts, so much only shall be given ; but the purpose is *to defray* the *nuptial* ceremony.—Such is the interpretation proposed in the *Calpateru*, with which the *Mitâcsharâ* and *Pracâśa* concur, as is remarked by CHANDESWARA. Consequently the brother of a daughter produced by the *Brâhmanî* wife, shall have four shares ; and his sister shall have a fourth part of that allotment, or one share : but the daughter of a *Cshatriyâ* wife shall have a quarter less than that share, and so forth in the order of the classes. Hence the meaning of the remark, that the fourth part of a share shall be given out of the whole estate, is that a quarter *of a share* shall be made good by taking a *sufficient* sum out of the allotments of all the brothers. All this is copied from CHANDESWARA.

It follows from what has been said, that the law does not positively direct a share to be given to sisters as well as to brothers, but their nuptials must be defrayed by assigning a fourth part *of a share* for that purpose. Accordingly the sister taking a fourth part, and defraying the charges of her nuptials with some part of the money, may keep the remainder ; but her brothers must not defray her nuptials with a very inconsiderable sum, by any *unbecoming* means *of parsimony* : for this end, the allotment of a fourth part is directed. Hence it is said, the purpose is to defray the nuptial ceremony. On this subject MISRA says, the allotment of a fourth part is indeterminate ; but the meaning is, that so much shall be given as may be sufficient to defray the expences of the marriage. RAGHUNANDANA observes, that the text which ordains the allotment of a fourth part, intends the appropriation of a sufficient sum for the nuptial ceremony,

CXX.

MENU :—To the *unmarried* daughters let their brothers give portions out of their own allotments respectively, *according to the classes of their several mothers*: let each give a fourth part of his own distinct share; and they who refuse to give shall be degraded.

JIMÚTAVÁHANA, commenting on this text, remarks: since it is expressed “let brothers give portions,” and since degradation is denounced if they refuse to give the allotment, it follows that daughters do not receive such portions as having a right to share in the succession. To one brother who is entitled to *a share of* the succession, another brother does not give a portion out of his own allotment: if a daughter were entitled to partake of the succession, the parceners not voluntarily yielding her share, would be compelled by the king. Hence degradation, instead of amercement, is properly stated *in this case* under a title of jurisprudence. For this reason it is said, “out of their own allotments.” A portion may well be given by a parcener out of his allotment, to one who is not entitled to partake of the succession. HELÁYUD’HA and others hold, that ‘so much only should be given as is sufficient to defray the expence of the sacrament *or marriage*: but ‘a fourth part is mentioned by way of example.’ If there be brothers unequal in class, and none of equal class, still a portion must be given; else the investiture *or marriage* of a sister would in this case fail. Nor should a quarter of their own share be given, *by brothers inferior in class*, to the daughter of the *Bráhméní* wife: for CHANDÉSWARA observes, that the portion shall be fixed at the fourth part of the share which would belong to a son of the same class.

The text of MENU (CXX) is thus interpreted: the fourth part of the shares which are allotted to brothers of the same class with the sister shall be computed; and deducting that sum, *in due proportion*, out of their own several shares, the brothers shall give it as a portion to the unmarried daughters. If the
text

text be read *śwēbhyah śwēbhyah* instead of *śwēbhyō'nśēbhyah*, the repetition supposes two or more brothers ; and the sense is, taking a quarter of the allotment of a brother equal in class, let the brethren give it as a portion to the unmarried daughters. The same meaning is also conveyed in the gloss of MISRA. It is not, however, the sense of the text, that all the brethren shall take the sum out of the allotment of those brothers only who are equal in class *with the unmarried sister* ; for the rest of the brethren cannot take the fourth part of the share belonging to the brother who is of the same class *with the unmarried sister* : the expression “ out of their own allotments ” would be therefore unmeaning, and the investiture *or marriage* of a sister might fail, should she have no brother equal in class.

It is directed, that a fourth part of a share shall be given ; and that *allotment*, according to CHANDÉSWARA, is merely intended to defray the expenses of the *nuptial* ceremony. Others hold, that so much only shall be given as is sufficient to accomplish the sacrament *or marriage*. On this subject JÍMÚTAVÁHANA remarks, that if the estate be considerable, a sufficient sum for the nuptial ceremony shall be given ; and a fourth part of a share is not positively directed. This must be understood where the number of daughters and sons is equal : if the number be unequal, a large sum is *thus* given to the daughters, or the sons are altogether deprived of their shares. Nor can this be proper ; for the son is pre-eminent. A fourth part of a share must be given to sisters ; but if they be twice or thrice as numerous, they would receive a greater sum than their brothers ; if they be four times as numerous, the brothers would be deprived of their shares ; if they be five times as numerous, the case would be very puzzling. Yet such a case may occur. The rule for giving a quarter of a share cannot *therefore* be received without exception. In fact, the rule only bears, that a brother shall give a fourth part, if he have a considerable allotment. But if sisters be few in number compared with the brothers, or if there be no brothers, another rule of VISHNU must be adduced.

CXXI.

VISHNU :—The marriage and other ceremonies of
unmarried

unmarried daughters must be defrayed in proportion to the wealth *inherited*.

The text of MENU may be understood in two senses, from the ambiguity of the terms. Let them give to each sister a portion equal to the fourth part of the share allotted to a brother of the same class, making up the sum out of their own allotments respectively. Or let them give to their sisters one fourth part of their respective allotments. Consequently, should the sisters and brothers be equally numerous, a quarter of each allotment must be given ; if they be less numerous, a portion equal to a quarter must be made good *for each sister* ; if they be more numerous, let the brothers, deducting a fourth part from their own allotments respectively, throw all these sums together, and defray the marriages of all their sisters out of this fund. However, the rule of giving a quarter is only intended to ensure the purpose. For instance ; a wicked brother might say, “ my sister shall be “ given to this abject person, who will accept a small nuptial “ portion ; I care not for the censure of the world, provided my “ wealth be increased.” Prevented in this design, he must obtain an honourable and suitable match for his sister. He must give so much, within a quarter of his own allotment, as suffices for such a marriage. However, there is no harm if he exceed the quarter. But, if the precept for allotting a fourth part of a share be universal, as supposed by CHANDÉSWARA, then, should two sons inherit a fortune of ten trillions, they would both be guilty of a moral offence, if they happen to expend less than half a quarter of that sum on the marriage of a sister. Now that is not consistent with common sense. Hence the precept, conveyed by the rule, is this : let a brother give money, not exceeding a fourth part of his own allotment, until the sacrament be completed for his sister.

The *Retnâcara* and other works, and RAGHUNANDANA and the rest, concur in expounding ‘ sacrament ’ as denoting marriage. The term may signify the ceremony of giving a name and so forth ; why is it not so explained ? To this objection we answer ; the ten sacraments are only necessary for twice-born men, not for *Sûdras*, nor for women. Authors therefore consider the portion assigned as intended only for indispensable sacraments.

sacraments. The investiture and other ceremonies of a brother, as subsequently mentioned, concern men of twice-born classes: marriage is the only sacrament for a man of the servile class.— This is remarked by VÁCHESPATI BHATTÁCHÁRYA; ‘for other sacraments besides marriage, are in respect of the *Súdra* voluntary, like the consecration of a pool or other *spontaneous* act of religion; they are not required to qualify him for offering funeral cakes.’ He adds, ‘other sacraments are performed by men of low classes, on account of their riches, to attain the rank of *Satśúdra*.’ This is founded on the following text.

CXXII.

The *Brahme-purána*:—A man of the servile class universally obtains marriage as his only sacrament.

The word “universally” denotes that marriage alone is constantly required. Let it not be argued that a *Súdra* may use holy texts where another sacrament is voluntarily performed.— The text of YAMA also forbids the use of prayers on other occasions; “the servile class shall be so governed, the sacraments being performed without holy texts.” That being the case, since the text of YAMA forbids generally the use of prayers at sacraments *performed for men of the servile class*, may not their marriages be performed without holy texts? That is admissible, and such a practice occurs in many instances. Be it so in respect of *Súdras*: how are other sacraments of women merely voluntarily? It must be so held in respect of ceremonies for women of all classes; for the author has omitted to mention it, merely because the preceding reasoning admits of no exception. But those who are disposed to argue that all the sacraments are requisite for *Súdras* and for women, but their marriages alone are celebrated with prayers, are obliged, in support of this opinion, to give an extension to the meaning of the words “nuptials” and “marriage” which occur *in texts*, as used not in an appropriate sense, but figuratively, for sacrament in general. This point must be so understood from the text which expresses,
“the

“ the nuptials of women sprung from twice-born classes are
 “ celebrated with prayers.”

Since the gift of a share and of a nuptial portion is directed by two different texts, must not both be given? No; for the text of YÁJNYAWALCYA mentions the fourth part of a share as given to defray the ceremony.

CXXIII.

YÁJNYAWALCYA :—For any of the brothers, whose investiture and other ceremonies had not been performed *by the father*, those ceremonies shall be performed by brothers, of whom the sacraments have been completed; and for their sisters, by giving a fourth part of their respective shares.

On this text VIJNYÁNÉSWARA comments: ‘ by brothers
 ‘ making a partition after the death of the father, the investiture,
 ‘ and other ceremonies, for brothers not already initiated, must
 ‘ be performed out of the whole estate; and, for sisters, of
 ‘ whom the sacraments have not been completed, those cere-
 ‘ monies must be performed, each brother contributing a fourth
 ‘ part of his own allotment: hence it appears, that daughters
 ‘ shall participate after the death of the father.’

CXXIV.

DÉVALA :—A nuptial portion shall be given to *unmarried* daughters out of their father’s estate*.

CXXV.

VYÁSA :—For any of the brothers, whose investiture and other ceremonies had not been performed, the other brothers, of whom the sacraments have already been completed, shall perform those cere-
 monies

* See the sequel of the text at V. 420.

monies *at the expense of the paternal estate*: and for *unmarried* sisters, the sacraments shall be completed by their elder brothers, as the law requires.

Since a nuptial portion is ordained in this and in many texts, and a fourth part of their brother's allotment is stated in other texts, by MENU (CXX) and the rest, the gift of these portions must be argued *in different cases* upon the preceding reasoning. CÁTYÁYANA propounds both forms.

CXXVI.

CÁTYÁYANA:—For unmarried daughters a fourth share is ordained, and three shares for sons; but if the estate be small, a daughter is considered as having a right *to a sufficient portion, without determining the rate*.

The *Retnācara* has this comment: ‘ If the portion fixed at a fourth part of a brother's allotment be insufficient, and a larger sum be required to defray the charges of the nuptial ceremony, a girl has a right to that sum, wherewith her marriage may be defrayed: so much, therefore, must be given by a brother, out of his own allotment, to defray his sister's nuptials.’ It should not be said, that the same objection occurs as above-mentioned; if the sisters be numerous, brothers might be reduced to a small allotment, or be altogether deprived of their shares. Brothers are not reduced to a small allotment, nor altogether deprived of their portions, by dividing the estate into shares according to the number of brothers quadrupled and added to the simple number of sisters, and allotting four shares to each of the brothers and one share to each of the sisters. Nor should it be objected, why has not this mode been noticed by JÍMUTAVÁHANA? It was his independent choice *to omit it*. The sense of the text is, if the whole estate be small, daughters have a right, that is, a claim similar to property. The meaning has been explained in the *Retnācara*. According to this construction, the texts of DÉVALA and the rest may relate to the case where the estate is small;

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and the allotment of more than a fourth share is therefore authorized. But, in fact, this should only be admitted when the estate is very inconsiderable: because an unmarried daughter is, as it were, a debt left by the father; since a text *declares him criminal* if his daughter's marriage be not accomplished, and another law forbids the sale of a damsel.

If a damsel, yet unmarried, arrive at puberty in the house of her father, he is guilty of infanticide *by detaining her at a time when she might have been a mother*; and the damsel is held degraded to the servile class.

That country is held degraded, wherein dwells a man who has sold *his daughter to the embraces of a purchaser*:

But JÍMÚTAVÁHANA otherwise expounds the text of CÁ-
TYÁYANA (CXXVI): if the estate be inconsiderable, daughters have a right to one share, and brothers to three. The opinion delivered in the *Retnácara*, though true by the letter of the law, seems inconsistent with common sense; for it may sometimes happen that the nuptial ceremony could be defrayed with less than a fourth part of a share. If the father leave no property, how shall a sister's marriage be defrayed? It is not any way defrayed; for the texts of VYÁSA and DÉVALA (CXXIV and CXXV) direct, that the ceremonies shall be performed out of the paternal estate; it is not indeed expressly mentioned in other texts, but a rule directs, not to explain by other arguments what is already obvious.

CXXVII.

NÁREDA*:—Or, if no property of the father remain, the investiture and other ceremonies must be performed

* This text should regularly follow that numbered CXXVIII, but I do not alter the arrangement of the original. T.

performed out of their own shares, by brothers, for whom those ceremonies have already been performed.

It should not be argued from this text of NÁREDA, that if there be no property left by the father, the nuptial ceremony must be defrayed out of their own acquired property received in alms or the like. That is not admitted by JÍMÚTAVÁHANA. He thinks, that NÁREDA propounds the mode of effecting the investiture and other ceremonies for a brother, when there is no property left by the father, having already propounded (CXXVIII) the necessity of performing those ceremonies for brothers, as appears from the terms of that text (CXXVIII) being in the masculine gender. Consequently, since he had premised the investiture of brothers, the same ceremony must be intended by the context, not the marriage of a sister; and both texts of NÁREDA must be so expounded.

CXXVIII.

NÁREDA* :—For any of the brothers, whose investiture and other ceremonies had not been performed by the father in due order, the other brothers shall perform those ceremonies at the expense of the paternal estate.

But others hold, that, reasoning from analogy, the marriage of a sister must be defrayed *by brothers* out of their own acquired property; else, it would be imputed as a great offence to the father, that the marriage of his daughter did not take place. JÍMÚTAVÁHANA himself has used arguments drawn from analogy, in treating of Inheritance. For example; in commenting on the text of YÁJNYAWALCYA (LXXXIII), which denies the participation of a wife, to whom female property has been already given, he quotes the text concerning a superseded wife (LXXXVII): now this is an argument drawn from analogy; and that which is established in one case, is applicable

* Attributed to VYA'SA in the *Vivádárna* Setu.

to another, unless a special objection occur. No difficulty is even supposed upon the interpretation of those who consider the feminine as understood in the masculine terms of the text. If the particular practice established among the *Bráhmanas* of this country by the mighty prince BELLÁLA SENA, who possessed unbounded powers by the favour of the Supreme Deity, be considered, the *Bráhmana*, who is selected by the priest of the family, must accept a damsel whose father is deceased, to secure the bliss of all her father's lineage: hence the charges of the marriage must be any-how defrayed by *her natural guardians*; else they would infringe the respect due to her father's race. This practice, though not enjoined by the law, is here mentioned, because it has universally prevailed among the *Bráhmanas* of *Rá'd'ha*. MISRA also acquiesces in this opinion.

It should be observed, that, to acquire the rank of *Sat'súdra*, it is necessary for the offspring of a respectable *Súdra* to perform the investiture and other ceremonies: and this has not been ordained by the law, but is founded on custom alone.

CXXIX.

SANĀHA and LIC'HITA:—An unmarried daughter shall take the ornaments of a virgin and the female property given to her mother at the time of her nuptials.

The unmarried daughter takes "the ornaments of a virgin," that is, her own ornaments, such as bells worn on the ankle and the like. The *Retnácara*.

The meaning is, that ornaments or the like, which have been worn by a daughter in the house of her father, the brothers shall not divide after his death, deeming them paternal property, but shall relinquish them to the damsel. "The ornaments of a virgin" may signify ornaments which belonged to the mother while she was a virgin, and what was given to her at her nuptials, as expressed in the following text.

CXXX.

BAUDHĀYANA :—Daughters shall take the ornaments of their mother given *her* at the time of *her* nuptials, and other effects, *such as clothes and the like*.

The term used in the text signifies, given at nuptials. They shall also take, besides the ornaments, other effects which were given to their mother at the time of her nuptials, such as clothes, metallick vessels, and the like; and this must be understood when the mother is deceased. The subject will be further discussed under the title of Succession to the Property of a Woman. It has been briefly noticed in this place, being suggested incidentally. That a girl shall not take any other property, is intimated in the following text.

CXXXI.

BAUDHĀYANA, after premising the right of inheritance :—Those who have not faculties *enlightened by knowledge of the law*, shall not take the heritage.

This text, grounded on scripture, denotes that women are not capable of inheriting. The term (*nirindriyāh*) is explained in the *Pracāśa* ‘destitute of strength,’ meaning *the weaker sex*.—This, as is observed in the *Retnācara*, relates to other women than those for whom shares have been ordained. Accordingly DÉVALA (CCCCXX) mentions the succession of a daughter to the estate of one who leaves no male issue. This shall be discussed under the title of Succession to such person.

The following text enjoins the investiture and other ceremonies for brothers:

CXXXII.

VRĪHASPATI :—For younger brothers, whose investiture

titure and other ceremonies have not been performed, their elder brothers shall perform them out of the collected wealth of the father.

Some consider the term *yaviyāśab* as substituted for *yaviyānsab* with the freedom exercised by Sages, omitting the regular inflection and the prolongation of the vowel. (*It consequently signifies younger brothers.*) Others take the term in its regular sense, "of the youngest;" and expound the phrase, 'out of the common estate of the youngest and other brothers.' In effect there is no difference. The *Retnācara*.

The first interpretation is obvious; in the second, "out of the common estate" is added to show that the joint stock is meant, it being already suggested that the ceremonies must be performed out of the estate of the father, in which the youngest brother has an interest: now the youngest has a claim on the common estate.

It is remarked in the *Retnācara*, upon the text of VYĀSA (CXXV), that "sacraments of sisters" signifies their nuptials. On the texts of YĀJNYAWALKYA and NĀREDA (CXXIII, CXXVIII and CXXVII), it is remarked in the same work, 'that the several sacraments of brothers intend the ceremonies, 'from that which is performed on the birth of a male, to his 'investiture with the mark of his class.' After the death of a father, the eldest brother is alone competent to perform those rites; but in respect of marriage, he whose investiture and other ceremonies have been performed, is alone competent to direct the nuptial ceremony for himself, whether his father be living or dead. Accordingly many Sages have used the terms "elder brothers," and "brothers of whom the sacraments have been completed." If it were implied that the sacraments shall be effected by money, those epithets would be unmeaning. It is not meant that younger brothers, or those of whom the sacraments have not been completed, shall not contribute to the expence of a brother's investiture: for that would contradict common sense; because the third brother would contribute nothing towards the investiture of the second, but would receive a contribution from him for his own. On what argument can this be shown to be consistent with common sense? If it be proposed on the ground of

of the law which states that the charges must be defrayed by elder brothers of whom the sacraments have been completed, not by those for whom those ceremonies have not been performed, (for that removes the disparity of requiring those of whom the sacraments have not been performed to defray the charges of their own investiture,) still the epithet "elder" would be unmeaning. If it be alleged, that when a ceremony other than marriage is erroneously performed in an irregular order for a younger brother before his elder, the due order being a part, *not the essence* of a right, the ceremony is fully accomplished by the performance of the principal *and essential* part, although it have failed in an *unimportant* point; and the text is intended to exempt the fourth brother, whose sacraments had been completed before his elder brother's, during the life of his father: still the consequence is not consistent with common sense; for the plain inference is, that every one of those for whom the investiture and other ceremonies have been performed, shall contribute money *for the sacraments of another brother*. Consequently all the brothers, whether elder or younger, whether their sacraments have or have not been completed, shall contribute money for the ceremony *to be performed*; but the eldest alone, whose investiture has been performed, is competent to conduct the ceremony. The sacrament to be completed is the investiture with the mark of the class, not any one ceremony; since one for whom the ceremony of tonsure only has been performed, is not qualified for acts of religion.

CXXXIII.

MENU*:—*Till he be invested with the signs of his class* he must not pronounce any sacred text, except what ought to be used in obsequies to an ancestor; since he is on a level with a 'Súdra before his new birth from the revealed scripture.

He is on a level with a 'Súdra, because he is not qualified for
H 4 reading

* Chap. II, v. 172, cited anonymously in this place.

reading the *Véda*; nevertheless he is not unentitled to respect. The brother for whom a ceremony is to be performed, must contribute to the charges of it; as is made evident by *VRIHASPATI*, “their elder brothers shall perform those ceremonies out of the collected wealth of the father” (CXXXII). Why is it said, ‘the ceremonies from that which is performed on the birth of a male?’ for that is not the first holy rite. The father alone performing the ceremony attending prayers for conception (CXXXIV), a brother is not competent to recite them. The ceremony to obtain male offspring, and that of combing the wife’s tresses, need only be performed once; and having been already fulfilled while the eldest brother was in the mother’s womb, there is no occasion for repeating them*. By mentioning ‘ceremonies from that performed on the birth of a male,’ it is intimated, that a brother by a different mother is not competent, in the first instance, to perform that and the subsequent ceremonies.

CXXXIV.

Let the father himself perform the eight ceremonies which perfect *the second birth of a twice-born man*, like the ceremony on conception; or on failure of him, let another perform them in regular order †.

An

* These ceremonies precede birth. 1st, *Garbhádbána*, a ceremony which should precede conception. 2d, *Punśavana*, a rite performed at the expiration of the third month of pregnancy. 3d, *Símantónnayana*, performed in the 4th, 6th, or 8th month of the first pregnancy. T.

† By these eight ceremonies I understand—1st, *Játacarma*; a ceremony ordained on the birth of a male, before the section of the navel string, and which consists in making him taste clarified butter out of a golden spoon. 2d, *Nāmacarana*; ceremony on giving a name, performed on the 10th day after birth; or on the eleventh, twelfth, or even the hundred and first day. 3d, *Nishcramana*; carrying the child out of the house to see the moon, on the third lunar day of the third light fortnight from his birth; or to see the sun in the third or fourth month. 4th, *Annaprāsana*; feeding the child with rice in the sixth or eighth month, or when he has cut teeth. 5th, *Chudācarana*; the ceremony of tonsure, performed in the second or third year after birth. 6th, *Upanayana*; investiture with the marks of the class, performed in the eighth year from the conception of a *Bráhmaṇa*; but it may be anticipated in the fifth, or be delayed to the sixteenth year. 7th, *Sávitri*; the ceremony of investiture hallowed by the *Gáyatri*, which must not be

An objection may be here suggested. The remark contained in the *Retnácara*, on the texts of NÁREDA, &c. does not seem accurate; the term there used does indeed occur in the text of NÁREDA (CXXVIII), but it neither expresses 'brothers for whom the ceremonies have been completed,' nor 'elder brothers.' This text might therefore be unexceptionably considered as relating to the ceremonies in general, including marriage. Hence all the brothers should contribute to defray the several ceremonies including marriage. This has been thought reasonable by VÁCHESPATI BHATTACHÁRYA. However it appears to be his opinion, that no ceremony can be legally performed for a younger brother before it has been performed for the elder. That point should be examined by a practised mind.

It should be here observed, that, if a younger brother contract a marriage, while the elder has not yet taken a consort, it is not a *legal* ceremony perfecting the class of that younger brother: the eldest must therefore contribute money to repeat that ceremony in a legal form; and the younger brother must perform penance. But the contribution is not ordained by the law for this case. Since all the texts contain the expression "whose investiture and other ceremonies have not been performed," and direct that those ceremonies shall be performed for such brothers; and since a marriage subsequent to one which was legal cannot be considered as the last perfect rite, (*those ceremonies having been completed by the first contract*;) all the brothers shall not contribute to defray the second marriage of any one brother whose wife has deceased. He ought, however, to contract another marriage, to fulfil his duty; as directed by the following text, wherein 'twice-born' is merely illustrative, and relates to the four classes:

But

be delayed for a *Bráhmaṇa* beyond the sixteenth year: it should be performed on the fourth day after the first investiture. 8th, *Samāvartana*; ceremony on the return of the student from his preceptor's house. The whole number of ceremonies called *sanscára*, as expiating the sinful taint contracted in the mother's womb, and as effecting regeneration, in other words, as perfecting the class of a twice-born man, are ten. To the eight ceremonies now enumerated must be therefore added the ceremony which precedes conception (*garbhád'hána*), and marriage, which is the last of these sacraments. Rituals contain other ceremonies, two of which are mentioned in the text and in the preceding note, but these are not essential. T,

But let not a twice-born man remain a single instant excluded from the *four* orders*.

In the *Retnácara* the text of NÁREDA (CXXVII) is read, *bhrátrīnām pūrva sanscrītaiḥ*, “by those, among the brothers, for whom the ceremonies have been performed.” JÍMÚTAVÁHANA reads, *bhrátrībhiḥ pūrva sanscrītaiḥ*, “by those brothers for whom the ceremonies have been performed.” According to the opinion of those who consider the feminine as understood in the masculine terms of another text, “any of the brothers or sisters” (CXXVIII), the term “ceremonies” must signify all the rites, from that performed on the birth of a male to his investiture with the marks of his class; and, *in the case of a sister*, it must signify marriage alone. According to other opinions, the rites, from that performed on the birth of a male to his investiture, must be considered as denoted by that term in every text. Since it is expressed in every text, that the charges shall be defrayed, “brothers” are mentioned indeterminately; where the contribution of money is ordained, that term comprehends a nephew whose father is dead, and other heirs; for, succeeding to the estate of his paternal grandfather, or other ancestor, he must contribute to the charges of the investiture or other ceremony performed for the son, as well as discharge the debts of that ancestor. But paternal uncles need not defray those ceremonies for a nephew, since the performance of them was a duty incumbent on his father, *not on their’s*. Upon this subject VÁCHESPATI BHATTÁCHÁRYA says, ‘a brother is the proper person to perform and *defray* those ceremonies *for a nephew*, if the paternal grandfather be not living.’ This is founded on the following text, and on the rule, that an exposition of law established in one case is applicable to others, unless there be good ground of exception.

CXXXV.

YÁJÑYAWALCYA:—In the disposal of a girl, the father,

* If he have no wife living, he is no longer in the order of a married man. To continue in the order of a housekeeper, he must therefore contract another marriage. T.

father, the paternal grandfather, the brother, a kinsman, or the natural mother, shall be consulted in the order here specified : upon the death of the first, the right of giving away the damsel devolves on each of the others successively, provided they be of sound understanding.

This should be examined. The two acts are not similar ; for, were they so, a mother would be likewise competent to perform the investiture and other ceremonies for her son. But, on failure of uterine kindred, brothers of the half blood and so forth, as far as learned priests (that is, relatives within the degree of *śa-pindas* and remoter kinsmen in the order of propinquity), must be deemed competent to perform those ceremonies, as common sense shows. The order of performing them is this : first, the rite on the birth of a male should be performed ; next, the ceremony of giving a name, and so forth ; and among persons for whom a ceremony is to be performed, it should be first done for the eldest, and last for the youngest : but the ceremony of boring the ears is no rite necessary to perfect *the twice-born man*. In respect of brothers by different mothers, there is no particular order to be observed. Such is the opinion of RAGHUNANDANA. To discuss this subject further, would be superfluous.

CXXXVI.

CĀTYĀYANA :—Effects which a kinsman has embezzled, let not a coheir use violence to make him restore ; nor let a coheir be obliged to make good what he had expended before partition.

The first hemistich relates to effects embezzled, at the time of partition, by a kinsman, that is, by a brother or other coheir : this will be considered in another place *. The last part of the text is an answer to the question, whether a brother shall be obliged to make good, at the time of partition, what he had consumed during coparcenary more than his coheirs, in consequence

quence of having a large family, or of his being subject to greater expence than the others? Consequently the sense is virtually this; the coheirs shall only divide that which remains over and above what has been expended by any of the brethren, who live together and partake of the same food. Shall a brother be obliged to make good what he has expended for the nuptials of a daughter? the answer is, since all the coheirs are interested in a duty fulfilled at the charge of the common estate, that money is virtually expended by all the parceners; therefore it shall not be made good. Nor shall that which has been disbursed for the enjoyment of a woman, be repaid; for the term use *or expenditure* comprehends fruition. If it only signified the act of swallowing, a coheir would be bound to make good what he had previously expended for clothes or the like: but what he has embezzled, though not yet disbursed, must be made good. This will be explained in its place. All other property, which is partible, let the coheirs divide. Partible property will be hereafter explained.

The mode of making a partition is declared in a text of MENU (LIII). The deducted allotment must be given according to age and virtue, as already mentioned in a former chapter. CHANDÉSWARA alleges a reading, *samavarnāsu vā jātāb*, instead of *samavarnāsu yé jātāb*. He considers sons produced by wives unequal in class as comprehended in the text (LIII) by the particle “or” (*vā*): if there be many sons, the portion of an eldest son is not supposed *due to more than one*; the deducted allotment shall only be given to the eldest of them all. By “many” is meant the number of three or more; for MENU has noticed the portion of a third son (XXXIX 2). But other lawyers hold, that the legislator, having propounded partition among brothers unequal in class, resumes the subject as it relates to brothers of the same class, for the sake of embellishing his book by *fully explaining the subjects treated*. The deduction shall be regulated in the mode already explained.

MISRA thus expounds a text of MENU, cited in a former chapter (LXXIII): ‘it is not the act of their father; therefore no deduction of a twentieth part or the like is allowed in this case.’ The meaning is, when property has been acquired by the labour of the brethren, the shares, in a distribution made by them,

them, not by their father, shall be equal, without any disparity whatsoever: but if the partition be made by the father, he shall have either a double share, or half *of the whole*; it is therefore said, it is not the act of the father. Still it is directed by MENU, that brothers shall have equal shares (XXIX). Or it may signify, “it was not the wealth of the father,” merely describing the nature of the property. In effect the additional share of an eldest son is forbidden in this case.

CXXXVII.

GÓTAMA, after premising property acquired by themselves:—Unlearned brethren must make an equal division *of it*.

The text of MENU, formerly cited (CVII), and as there expounded, is properly referred to the case of an indolent brother, for it is delivered by MENU when treating of Exertion *for gain* *. It may, however, be taken in another sense, from the ambiguity of the terms; for there is need *of a precept on that subject*. This has been already explained at large. The following text *contains a precept* relative to property acquired by the labour of any one brother with supplies from the patrimony, but unaided by the labour of the rest.

CXXXVIII.

VASISHT'HA:—He among them, by whom property is acquired through his own sole labour, shall take a double share of it †.

It follows, that the rest shall have one share each. MISRA concurs in this inference. He remarks on the text of VYÁSA (CX), that “valour or the like” ‘signifies generally any mode of acquisition, such as science and the rest; for the term “or the like” relates to the modes *of acquisition*, and is joined in this apposition to a term of the same nature. Is not property ‘which

* Chapter LX, v. 207.

† Already inserted, v. 75.

‘ which has been gained by learning, valour, and the like, even
 ‘ with the use of the common stock, exempt from partition?
 ‘ and does not this contradict the rule above cited? No; for that
 ‘ relates to the particular exertions of learning, valour and the
 ‘ rest, as described by CĀTYĀYANA; but this relates to another
 ‘ case; the simple display of learning, not as there described.’
 (It is not improperly said, “ the rule above cited;” for MISRA
 first considers property gained by learning.) According to MIS-
 RA, the rest of the coheirs do not participate in wealth acquired
 by learning, *in the cases described by CĀTYĀYANA*, even though
 supplies be received from the joint estate. But this contradicts
 the opinion of JĪMŪTAVĀHANA and others. It will be dis-
 cussed under the head of Wealth gained by Learning. But if the
 common stock be not used, they who make not the acquisition
 shall have no share. This will be also discussed in the same
 place. It may be here observed, that the additional share
 of an eldest son shall not be allowed in this case; because it ap-
 pears to be only admitted, in the case of property left by the fa-
 ther, on account of the benefit received by him through *the*
birth of his eldest son. It should not be objected, that, were it
 so, the word “ all,” in texts which ordain equal division, would
 be superfluous. Since he who makes the acquisition shall have
 a double share of wealth gained without a common exertion of all
 the parceners, equal partition does not take place.

Since the term “ wives of the same class,” in the text of
 MENU (LIII), is expressed in the plural number, is it not inti-
 mated that the distribution shall be made among the brothers
 produced by two or more wives who are equal in class, not
 among the mothers? and does not this contradict the rule of
 GŌTAMA (LIX)? No; for that rule directs partition to be
 made among brothers through the medium of their mothers, when
 the number of sons by the several mothers is equal, to avoid the
 trouble of distributing a very great number of shares. Accord-
 ingly that is declared in the texts of VRĪHASPATI (LXII and
 LXIII). If the sons born of one mother be equal in class with
 those born of others, that is, if all be of the same class; and if
 they be equal in number, that is, if the sons produced by each
 mother be equally numerous; then, all the mothers being equal
 in class, and having produced an equal number of sons, *such a*
mode

mode of distribution may be adopted. This is illustrative of a general meaning. The sons must be also supposed equal in good qualities; else, since the portion of the eldest son must be regulated by the degree of virtue *possessed by him*, a distribution could not be properly made through the medium of the mothers. In some instances the division may be made in right of the mothers, even though the degree of virtue be discriminated: but that is not at present noticed, because it is not pertinent, since it supposes the sons not numerous, and because it is encumbered with many wrong *interpretations*. But, if the number be unequal, though the class be the same, one mother having five sons, another four, and so on, the shares must be allotted to males (LXIII). The text is delivered to make it evident that the distribution may be originally made among males, even in the case of many sons produced by wives equal in class. Or the term used in the text signifies distribution regulated by the number of males: and that can only take place when they are of the same class; for unequal distribution will be directed among those who belong to different tribes. Since coheirs of various classes have not equal shares, the text of VISHNU expresses, "let sons of the same class receive equal shares, but give the best chattel with a deducted allotment to the first-born" (LIV). The deducted allotment of an eldest son has been explained.

By directing equal shares for sons produced by wives of the same class, it is intimated, that sons produced by wives of various tribes shall have unequal shares: what portions shall they receive?

CXXXIX*.

MENU:—This law, *which has preceded*, must be understood of a distribution among sons begotten on women of the same class: hear now the law concerning sons by several women of different classes.

2. If

* The three principal texts have been already inserted at V. 60.

2. If there be four wives of a *Bráhma* in the direct order of the classes, and sons are produced by them all, this is the rule of partition among them:
3. The chief servant in husbandry, the bull kept for impregnating cows, the riding horse or carriage, the *ring and other* ornaments, and the principal messuage shall be deducted from the inheritance and given to the *Bráhma* son, together with a larger share by way of pre-eminence:
4. Let *the Bráhma* take three shares of the residue; the son of the *Cshatriyá* wife, two shares; the son of the *Vaiśyá* wife, a share and a half; and the son of the *Súdrá* wife may take one share.

“ A distribution among sons begotten by the same father on
 “ women of equal class;” “ the law concerning sons produced
 “ by several women of different classes:” such is the construction of the text. “ The chief servant in husbandry;” the ploughman. Hence the ploughman, the bull, the riding horse, the ornaments, and the principal messuage shall be given to the son of the *Bráhma* wife; and one of his three shares is allotted to him by way of pre-eminence, because he is the principal and most excellent son. It is observed in the *Retnácara*, that the bull and the rest shall be given to him, if there be such *cattle and things belonging to the estate*. The term which occurs in the text being expounded “ women of the same class,” it alludes to partition among sons produced by several mothers of the same class, and to the deducted allotment which had preceded; and that follows from the term being used in the plural number. It is, however, merely illustrative, *and relates also to partition among the sons of one mother*. Several women of different classes are determinately meant; for one wife cannot be of different classes. Yet in fact several is not limited to the literal sense of *three or more*, but intends generally the case of *two or more* wives. The following texts propound a distribution made without any deducted allotment:

CXL.

MENU :—Or, *if no deduction be made*, let some person learned in the law divide the whole collected estate into ten parts, and make a legal distribution by this *following* rule :

2. Let the son of the *Bráhmaṇi* take four parts ; the son of the *Cshatriyā*, three ; let the son of the *Vaiśyā* have two parts ; let the son of the *‘Súdrā* take a single part, *if he be virtuous*.

“ The son of the *Bráhmaṇi* ;” since the sense is not positively limited to one, the same rule is applicable if there be two or more sons of the *Bráhmaṇi*. The *Retnācara*.

In a word, the sons of the *Bráhmaṇi* shall each take three shares, or four. Consequently, if there be two sons by the *Bráhmaṇi* wife, three by the *Cshatriyā*, two by the *Vaiśyā* and four by the *‘Súdrā*, in all eleven sons ; the estate must be divided into nineteen or into thirty-three* shares, and six or eight shares must be given to the two *Bráhmanas* ; six or nine shares, to the three *Cshatriyas* ; three or four shares, to the two *Vaiśyas* ; and four to the *‘Súdras*. The two forms of distribution, says JÍMÚTAVÁHANA, are regulated by some difference in the degree of virtue. The following text also notices the second mode of partition :

CXLI.

NÁREDA :—The shares diminish in the order of the classes for sons of an inferior tribe begotten on women legally married.

“ Sons of an inferior tribe ;” such as the *Cshatriya* and other sons of a *Bráhmaṇa*. “ Legally married ;” lawfully espoused.

“ The shares diminish ;” that is, the son of the *Bráhmaṇi* shall have

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* The number is erroneous in the original : it should be twenty-five. T.

have four shares ; the son produced by the *Cshatriyâ*, three shares, and so forth. The text is in some places read *varnântarêshu* sons of other classes, instead of *varnâvarêshu* sons of an inferior tribe. Still the sense is the same. The *Retnâcara*.

The *Sûdra*, being lowest of all, has one share ; the *Vaiśya*, being next above him, shall have one more, that is, two shares ; the *Cshatriya* shall have one more, or, altogether, three shares ; and the *Bráhmaṇa* shall have four ; the shares are diminished by one in each step. Consequently, for each inferior tribe the allotment is one share less than for the next superior class : such is the real sense of the text. The other reading may be explained, ' for each different inferior class, the allotment is one share less than for the preceding.'

This distribution concerns the sons of a priest ; but the same method may be observed in partition among the sons of a soldier or merchant. Consequently two shares, or three, for the son of the *Cshatriyâ* wife (CXXXIX and CXL), regard the legitimate son of a soldier, as well as the legitimate son of a priest. In like manner, there is no difficulty in considering the share and a half and two shares for the son of the *Vaiśyâ*, as relating to the legitimate sons of a priest, of a soldier, or of a merchant. It should not be argued, on the other hand, that both forms of partition must be considered as relating to the legitimate sons of a priest only ; because the text premises, " if " there be four wives of a *Bráhmaṇa*." YÁJNYAWALCYA propounds the second form of distribution for such cases : and, to satisfy the question arising on the first method, which may be applied to the legitimate sons of a soldier, it is proper so to extend its application.

CXLII.

YÁJNYAWALCYA :—The shares allotted to the sons of a *Bráhmaṇa*, by wives of different tribes, shall be four, three, two, and one, in the order of the classes ; to the sons of a *Cshatriya*, three, two, and one ; to those of a *Vaiśya*, two, and one.

When a *Bráhmaṇa* has four wives, a *Cshatriya* three, or a
Vaiśya

Vaiśya two, this is the form of partition among the sons born of them. The terms used in the text are explained in the *Retnācara*, sons of a *Brāhmaṇa* born in different classes; that is, produced by women of various tribes. The same should be understood in the sequel of the text. The first mode of distribution takes place when all the sons are equally virtuous, or *equally* deficient in virtue; the last mode, when the son of the *‘Sūdrā* wife is alone deficient. But if the son of the *‘Sūdrā* be very deficient in virtue, the *Mahābhārata* directs the following distribution among the sons of a *Cṣhatriya*, and among those of a *Vaiśya*.

CXLIII.

The *Mahābhārata* (BHISHMA addressee YUDHISHTHIRA):—For a *Cṣhatriya* two wives are ordained, O son of CURU! or a third wife of the servile class may be taken, but that is not directed in holy writ:

2. The estate of the *Cṣhatriya* father must be divided into eight parts; and the son of the *Cṣhatriya* wife shall receive four such parts of his father's estate;

3. And he shall also take whatever implements of war belonged to his father: but the son of the *Vaiśya* wife shall have three shares, and the son of the *‘Sūdra* one.

4. The *‘Sūdrā* shall receive his share, if it be allotted to him by his father, but he is not entitled to claim any portion unless it be expressly given to him. One wife only shall be married by a *Vaiśya*, O son of CURU!

5. Or a second wife of the servile class; but such a second marriage is not ordained in holy writ: his estate shall *however* be divided into five parts.

6. I will now propound the distribution of those shares between his two sons; four shares of the estate shall be taken by the son of the *Vaiśya* wife;

7. But the fifth part shall belong to the son of the *Ṣúdrá*: he shall receive that share, if it be allotted to him by his father; but he is not entitled to claim any portion, unless it be expressly given to him.

A similar mode of distribution should be established for the sons of a *Bráhmaṇa*; since the question arising on this point cannot otherwise be satisfied. That distribution is as follows: the son of the *Bráhmaṇi* wife shall have five shares, the son of the *Cṣhatríyá* four, the son of the *Vaiśyá* three, and the son of the *Ṣúdrá* one: the estate must be therefore divided into thirteen shares. This was also contemplated by NÁREDA (CXLI). However, the son of the *Ṣúdrá* has two shares less than the class next above him, merely because he is very deficient in virtue.

In the *Viváda Chintámení* the verse concerning the *Vaiśyá* (CXLIH 5) is read *dwitíyā vā bhavét Ṣúdrā na tu drīṣhtā trītiyācā* (or a second wife of the servile class may be espoused by him, but no third wife is ever seen), instead of *dwitíyā vā bhavét Ṣúdrā na tu drīṣhtāntataḥ smṛitā*. *Drīṣhtānta* here signifies the *Véda*: the sense is, that if a third wife of the servile class, though unnoticed in holy writ, be married by a *Cṣhatríyā*, her son may have such a share as is mentioned. The sense is the same in the subsequent verse (CXLIH 5). “The implements of war” are explained in the *Retnācara*, warlike weapons, as a scymitar and the like. The espousal of a *Ṣúdrá* is censured by the tenour of the preceding texts. MENU expressly reprehends such a marriage.

CXLIV.

MENU:—For the first marriage of the twice-born classes a woman of the same tribe is recommended; but for such as are impelled by inclination to marry again, women in the direct order of the classes are to be preferred;

2. A *Ṣúdrá* woman only must be the wife of a
Ṣúdra;

`*Súdra*; she and a *Vais'yá*, of a *Vais'ya*; those two and a *Cshatriyá*, of a *Cshatriya*; those three and a *Bráhmaṇi*, of a *Bráhmaṇa*.

The particle "only" refers to every part of the sentence, "she," "those two," "those three;" the subsequent phrase being thus connected with the preceding, marriages must in no instance be contracted in the inverse order of the classes. "But for such as are impelled by inclination to marry again, wives in the direct order of the classes are to be preferred:" this is mentioned to show a venial offence, not absolute freedom from guilt.

JÍMÚTAVÁHANA.

"Wives in the direct order of the classes are to be preferred;" for a *Bráhmaṇa* the most proper wife is a *Bráhmaṇi*; a *Cshatriyā* wife is in some degree disapproved; a *Vais'yā* is more censured; but a *Súdrā* is much blamed. In this case women of the military and commercial classes are also pronounced to be censurable wives for a priest, not a *Súdrā* alone; the same is also declared in respect of a soldier: how does it follow, that a *Súdrā* wife of a *Cshatriya* has not been noticed by the *Véda*? The following texts resolve this question.

CXLV.

MENU and VISHNU:—Men of the twice born classes, who, through weakness of intellect, irregularly marry women of the lowest class, very soon degrade their families and progeny to the state of *Súdras*:

2. According to ATRI and to (GÓTAMA) the son of UTAT'HYA, he who *thus* marries a woman of the servile class, *if he be a priest*, is degraded instantly; according to SAUNACA, on the birth of a son, *if he be a warrior*; and *if he be a merchant*, on the birth of a son's son, according to BHRĪGU.

3. A *Bráhmaṇa*, if he take a *Súdrā* to his bed, *as his first wife*, sinks to the regions of torment; if he

he beget a child by her, he loses even his priestly rank.

These texts are cited by JÍMÚTAVÁHANA, when treating of *marriages* in the direct order of the classes, with this preliminary observation; ‘both legislators declare it a great offence for a ‘twice-born man to marry a woman of the servile class.’ He explains women of the lowest class, ‘*Súdrā* women. Consequently the preceding text of MENU pronounces it an offence for a priest to marry women of the military and commercial classes; and these texts notice the greater offence of marrying a woman of the servile tribe: the present texts (CXLV) do not propound the less offence of marrying women of the military or commercial classes, as well as the greater offence of marrying a woman of the servile tribe; for the term, “women of a low class,” must signify ‘*Súdrā* women; else it would disagree with the context, where it is said, that by such marriages men soon degrade their families and progeny to the state of ‘*Súdras*, for the son of a *Cshatriyā* woman by a priest is acknowledged as a *Cshatriya*.

CXLVI.

Smṛiti.—Let men of mixed classes perform the several rites during purity and impurity like *those who belong to the same class with their mothers*.

Upon the opinion of those who consider them as ‘*Súdras*, it cannot be argued that there would be no disagreement with the context; for the contradiction of the subsequent texts (CXLV 2 and 3) could not be well reconciled, nor the inconsistency with the text (CXLVII) which introduces those precepts.

CXLVII.

MENU:—A woman of the servile class is not mentioned, even in the recital of any ancient story, as the *first* wife of a *Bráhmāna* or of a *Cshatriya*,
though

though in the greatest difficulty to find a suitable match.

Accordingly HÁRÍTA also passes a severe censure on those who marry women of the servile class.

CXLVIII.

HÁRÍTA :—No other is sacrilegious like the husband of a *Súdrá*; for that priest by whom she conceives shall perish.

This, coinciding with the texts of MENU and the rest, must relate to a *Súdrá* actually married by a twice-born man.

JÍMÚTAVAHANA.

CXLIX.

SANC'HA :—A *Bráhmaṇi*, a *Cshatriyá*, and a *Vaiś'yá* are pronounced suitable wives of a *Bráhmaṇa*; a *Cshatriyá* and a *Vaiś'yá*, of a *Cshatriya*:

2. But a *Vaiś'yá* is the only wife ordained for a *Vaiś'ya*, and a *Súdrá* for a *Súdra*.

Accordingly SANC'HA enumerates the legal wives for a man of a twice-born class, without mentioning a *Súdrá* woman.

Consequently those evils follow the marriage of a *Súdrá*, not the mere procreation of children on a woman of that class; for it is remarked by JÍMÚTAVÁHANA, that 'these evils do not follow the procreation of a child on a woman of the servile class, who has not been espoused by the begetter; but the offence is venial, and a slight penance must be performed, as will be mentioned.'

CL.

YÁJNYAWALKYA :—What has been said of twice-born men taking wives of the servile class, is not approved by me, because the husband is himself born a second time through the birth of a son.

1. 4

2. Three

2. Three wives, in the direct order of the classes, are ordained for the *Bráhmāna*; two and one for the *Cshatriya* and *Vais'ya* respectively; and a woman of his own class for the '*Súdra*.

In the direct, not in the inverse order of the classes. The wives of a *Bráhmāna*, *Cshatriya*, and *Vais'ya*, are respectively three, two, and one, in number. Some legislators have mentioned, as authorised by the *Vēda*, the marriages of *Bráhmanas* and the rest with women of the servile class; that is not my opinion; I propound another exposition of the *Vēda*. Such is the sense of the text. It therefore coincides with the observation, that such a marriage is not ordained in holy writ. However, YÁJNYAWALCYA does also recognise the marriage of a *Bráhmāna* with '*Súdrā* woman; else his former text (CXLII) would be irrelevant: and such a marriage with a *Súdrā* woman is only contracted through the impulse of inclination, but is not ordained by the *Vēda*; for this coincides with the *Mahābhārata* (CXLIII).

CLI.

PAIT'HI'NASI:—Four wives may be espoused by a *Bráhmāna*; and three, two, and one, by men of other classes respectively.

That is, three wives may be espoused by a *Cshatriya*, two by a *Vais'ya*, and one by a '*Súdra*.

CLII.

SANC'HA and LIC'HITA:—The most suitable match for every tribe is a wife of the same class*. Or, four wives may be allowed to a priest in the order of the classes, three to a warrior, two to a merchant, and one to a man of the servile class.

Consequently

* An option has been already given at V. 149. Note by the Compiler.

Consequently marriage with a woman of the same class only, marriages of twice-born men with women of different classes except the *Súdrá*, and their marriages with women of various classes including the *Súdrá*, are still three practices, of which the last is less proper than the preceding. Such is the sense conveyed: it is mentioned incidentally; the practice is authorized by the law, and a *Bráhmāna* may, at his pleasure, take one, two, three, or four wives, for each of those modes of acting have been propounded. VISHNU successively declares the partition to be made when all those wives bear sons, and when any one of them is childless.

CLIII.

VISHNU:— α The sons of a *Bráhmāna*, who were produced by women of the four different classes, shall divide the paternal estate into ten parts, of which the son of the *Bráhmāni* shall take four shares; the son of the *Cshatriyá*, three; the son of the *Vais'yá*, two; and the son of the *Súdrá*, one. β But if a *Bráhmāna* leave three sons, and none by a *Súdra* wife, they shall divide the estate into nine parts, and take their respective allotments of four, three, and two shares, in the order of the classes.

But if no woman of the commercial class have been taken in marriage, or if such a woman have been espoused, but prove barren, VISHNU also propounds the form of distribution for that case:

γ If there be no son of the commercial class, let those of other tribes divide the estate into eight parts, and take respectively four shares, three, and one.

Let the priest take four shares, the warrior three, and the *Súdra* one,

one, in the same mode, and for the same reasons, which have been mentioned. He proceeds to the distribution made when there is no son by the *Cshatriyā* wife.

δ' If there be no son of the military class, the estate shall be divided into seven parts, and the several allotments shall consist of four shares, of two, and of one. ε' If there be no son of the sacerdotal class, the estate shall be divided into six parts, and three shares shall be allotted to the *Cshatriya*, two to the *Vais'ya*, and one to the *Súdra*.

Having propounded the distribution among three sons, he proceeds to declare the partition between two.

σ' Should a *Bráhmāna* leave two sons, one a priest, the other a warrior, the priest shall take four shares of the estate divided into seven parts, and the warrior three. ζ' Should he leave a son of the sacerdotal, and one of the mercantile class, the *Bráhmāna* shall receive four shares of the estate divided into six parts, and the son of the *Vais'yá* two. η' Should he leave two sons, one a *Bráhmāna*, the other a *Súdra*, let them divide the estate into five parts, and let the *Bráhmāna* receive four shares, and the *Súdrá* one. θ' Should a priest or a soldier leave two sons, one a *Cshatriya*, the other a *Vais'ya*, let them divide the estate into five parts, and let the *Cshatriya* take three shares, and the *Vais'ya* two. ι' Should a priest or a soldier leave two sons, one a *Cshatriya*, and the other a *Súdra*, they shall divide the estate into four parts, and the *Cshatriya* shall receive three shares, and the *Súdra* one. ίά' Should a priest, a warrior, or a merchant, leave two sons, one a *Vais'ya*, the other

other a *Ṣúdra*, they shall divide the estate into three parts, and the *Vaiśya* shall receive two shares, and the *Ṣúdra* one.

VISHNU again declares perspicuously another form of distribution.

13' If there be two sons by the *Bráhmaṇi* wife, and one by the *Ṣúdrá*, let the sons of the *Bráhmaṇi* take eight shares of the estate divided into nine parts, and the *Ṣúdrá* one. 14' But if the sons of the *Ṣúdrá* be two, and the offspring of the *Bráhmaṇi* one son, let the *Bráhmaṇa* take four shares of the estate divided into six parts, and the sons of the *Ṣúdrá* two. 15' On this principle shares should be also distributed in other cases. An only son shall succeed to the whole estate of a *Bráhmaṇa*, provided he were born of a *Bráhmaṇi*, *Cshatriyá*, or *Vaiśyá* wife; to the estate of a *Cshatriya*, provided he were born of a *Cshatriyá* or *Vaiśyá* wife; to the estate of a *Vaiśya*, provided he were born of a *Vaiśyá* wife: a *Ṣúdra* succeeds to the estate of a *Ṣúdra*.

If a *Bráhmaṇa* leave an only son by one of three wives, a *Bráhmaṇi* and the rest, that son, being a *Bráhmaṇa*, a *Cshatriya*, or a *Vaiśya*, shall succeed to the whole of his father's estate. In like manner, the only son of a *Cshatriya* by one of two wives, being either a *Cshatriya* or a *Vaiśya*, shall succeed to the whole estate; and the only son of a *Vaiśya*, provided that son be of the commercial class: but the only son of a *Ṣúdra* by a *Ṣúdrá* wife shall succeed to his father's whole estate. The third wife of a *Cshatriya*, and the second wife of a *Vaiśya*, are not here mentioned, because such marriages are not authorized by the *Vēda*.

CLIV.

VASISHT'HA:—When a *Bráhmāna* leaves sons of the sacerdotal, military and commercial classes, the son of the *Bráhmāni* shall take three shares; the son of the *Cshatriyá*, two; and the rest shall share alike.

The *Retnácara* furnishes the following gloss on this text. “The rest” signifies the sons of the *Vaiśyá* wife. VISHNU and VASISHT'HA, thus propounding a different partition, must be reconciled upon the greater and less degrees of virtue which distinguish the parceners. Regularly they should receive allotments of four, three, and two shares in the order of the classes. The text is thus reconciled to the rule of VISHNU. It is applicable when the son of the *Vaiśyá* possesses few good qualities; and the distribution must be so made when no deducted allotment is given, for it coincides with the text of MENU (CXL).

CLV.

SANC'HA and LIC'HITA:—Sons produced by women of a different class *from the father*, receive shares of the heritage in the subduple proportion, following the order of the classes.

Consequently, should a *Bráhmāna* have male issue by four wives of various classes, his estate must be divided into fifteen parts, and eight shares must be allotted to the *Bráhmāna*, four to the *Cshatriya*, two to the *Vaiśya*, and one to the *Sūdra*: but if there be no son by a *Sūdrá* wife, it must be divided into fourteen parts, and distributed on the same principle in the order of the classes; or it may be divided into seven parts, allotting four shares to the *Bráhmāna*, two to the *Cshatriya*, and one to the *Vaiśya*; ultimately there is no difference: if there be no son of a *Cshatriyá* wife, the estate should be divided into eleven lots, of which eight belong to the *Bráhmāna*, two to the *Vaiśya*, and one

to the 'Súdra : if there be no son of a *Vais'yá*, eight shares out of thirteen belong to the *Bráhmāna*, four to the *Cshatriya*, and one to the 'Súdra : if there be no son of the *Bráhmāni* wife, the *Cshatriya* shall have four shares out of seven, the *Vais'ya* two shares, and the 'Súdra one. The estate of a *Bráhmāna* must be so distributed. Should a warrior leave three sons by three wives of *various classes*, the distribution is made by dividing the wealth into seven parts ; or, if there be no son of a 'Súdrā wife, by dividing it into six or into three shares ; if there be no son of the commercial class, by dividing it into five lots : the wealth of a *Cshatriya* must be so distributed. Should a *Vais'ya* leave two sons, his estate must be divided into three shares ; the distribution among three sons has been stated above : *but* if a *Bráhmāna* leave two sons, one a priest and the other a warrior, partition shall be made by dividing the estate into twelve, *into six, or into three* shares ; or if one be a priest and the other a merchant, by dividing it into ten, or into five lots ; or if one be a *Bráhmāna* and the other a 'Súdra, by dividing it into nine parts : in the other cases the partition is similar to that of a *Cshatriya's* estate. Such is the sense conveyed by the text of SANC'HA and LIC'HITA ; and it must be understood that this mode of distribution is adopted when the good qualities of the sons decline in the order of the classes. But some lawyers *think they* can maintain the following bad exposition : " Subduple " *they explain*, half or other part of a full share : he who has such an allotment, has a certain specifick share of the whole ; and the text may consequently coincide with that of NÁREDA (CXLI). The following text concerns the case where superior virtue is found in the inverse order of the classes :

CLVI.

VRÍHASPATI :—The son of the *Cshatriyá* wife, being elder by birth and superior in good qualities, shall have an equal share with the son of the *Bráhmāni* ; and such a son of a *Vais'yá* wife shall have an equal share with the son of the *Cshatriyá*.

The son of the *Cshatriyá* shall have an equal share with the priest,
if

if he be senior by birth, and superior in good qualities : such is the construction of one part of the sentence. If the son of the *Vaisyā* be also senior by birth and superior in virtue, he shall have an equal share with the *Cshatriyā*. Is he here supposed senior by birth and superior in good qualities to the son of the *Cshatriyā*, or to the son of the *Brāhmanī* ? On the first supposition, if he were also senior by birth and superior in good qualities to the son of the *Brāhmanī*, he would have an equal share with that son. The second supposition is not reasonable ; for it would be unnoticed that he shall have an equal share with the son of the *Cshatriyā*, if he be senior to him by birth and superior in good qualities ; now he ought to have an equal share with him in right of that seniority alone, without being also senior by birth and superior in good qualities to the son of the *Brāhmanī*. To this it is answered, he shall have an equal share with the son of the *Cshatriyā*, if he be senior to him by birth and superior in good qualities ; but if he be senior to the son of the *Brāhmanī*, there is no difference. For sons take one additional share for each gradation, in right of superior class ; and if a son of the next inferior class be superior in respect of age and good qualities, then, mutual equality being restored, they shall have equal shares ; but if the son of a class two degrees lower be senior by age and superior in virtue, then, reducing the great superiority of class, an equality arises with the intermediate tribe ; for the parity is only admitted in right of superiority by age and good qualities. If the sons of the *Cshatriyā* and *Vaiśyā* be both superior in age and virtue to the son of the *Brāhmanī*, but the *Cshatriya* be inferior to the *Vaiśya*, their claim is equal to that of the *Brāhmana* ; if the *Vaiśya* surpasses the *Cshatriya*, at the same time that both are inferior to the *Brāhmana*, his claim must be affirmed equal to that of the *Cshatriya*. It would be a great disparity, that one who was inferior in good qualities to the *Cshatriya* should receive a great allotment, and that one who surpassed him should receive less. That is now removed by the text cited.

CLVII.

BAUDHĀYANA :—A son by a woman of equal class,
and

and a virtuous son by a wife of a class one degree lower *than her husband*, shall take the portion of an eldest child : a virtuous son is the supporter of the rest.

If he only surpasses in virtue, he shall take the portion of an eldest son, that is, a deducted allotment ; if he be superior both by age and virtue, he has an equal claim with the class next above him, as also mentioned by VRĪHASPATI ; for the *Cshatriya* and the rest cannot have an equal share with the *Bráhmaṇa*, unless they receive the portion of an eldest son. JÍMÚTAVÁHANA observes, ‘ it is thus shown, that the son of a ‘ *Sūdrá* wife may in similar circumstances be entitled to an ‘ equal share with the *Vaiśya*.’ The portion of an eldest son, mentioned by VRĪHASPATI (XLV), may be argued as applicable even to this case : but the discussion of this point would needlessly swell the volume.

CLVIII.

GÓTAMA :—The son of a *Bráhmaṇa* by a *Cshatriya* wife, being endued with good qualities, shall have an equal share with the first born, excepting the *deducted* portion of an eldest son.

The *Retnācara* furnishes this gloss : excepting the bull and the rest of the portion deducted for an eldest son ; that is, no deducted allotment, such as the portion of an eldest son, shall be given to him. Consequently the meaning is, that he shall have an equal share with the son of the *Bráhmaṇi*.

CLIX.

GÓTAMA :—If there be sons *similarly circumstanced* and produced by a *Cshatriya*, and a *Vaiśya*, as the *virtuous Cshatriya* would receive an equal share with the son of the *Bráhmaṇi*, so shall the son of the *Vaiśya* have an equal share with the son of the *Cshatriya* ;

Cshatriya; and *so likewise* if they be sons of a *Cshatriya* father.

The text is thus explained in the *Retnâcara*: if the *Brâhmana* leave no son by his *Brâhmanî* wife, but leave two sons of *other tribes*, one by a *Cshatriyâ*, the other by a *Vais'yâ*, the son of the *Vais'yâ*, being virtuous, shall have an equal share with the son of the *Cshatriyâ*, who is his junior and is deficient in virtue, but without the deducted portion of an eldest son, in like manner as the son of the *Cshatriyâ* has, in similar circumstances, an equal share with the son of the *Brâhmanî*. Consequently the share of the son born of the *Brâhmanî*, as mentioned in the preceding text, is *merely* an example. “And *so likewise*, if they “be sons of a *Cshatriyâ* father;” if there be two sons of a *Cshatriyâ*, one by a *Cshatriyâ* woman, the other by a *Vais'yâ*, and they be similarly circumstanced, the rule of partition is the same.

CLX.

GÓTAMA:—The very same rule exists in regard to two sons of a *Vais'ya*, one by a *Vais'ya* woman, the other by a *Súdrâ*.

“The very same rule” alludes to that which has been delivered by BAUDHÁYANA; it declares a title to the portion of an eldest child: if the son of a woman equal in class be junior, and also deficient in virtue, while another younger brother is virtuous, they shall have equal shares. The *Retnâcara*.

That is questionable; for VRĪHASPATI ordains equal participation then only when the son of inferior birth is superior in age and good qualities: it seems advisable to explain the terms of *this text* separately, “elder by birth, and endued with good qualities;” but why should that be done when the same *conclusion* may be obtained by other means? The difficulty is removed by considering the phrase in the text of GÓTAMA, “being endued with good qualities,” as a mere instance which includes the notion of one senior in age.

By

By the expression "a hundred sons," in the text of MENU (LXVI), this meaning is conveyed: if a *Sûdra* have even a hundred sons, allotments are not dissimilar, as they are when a *Brâhmana* leaves four sons. Consequently seniority in right of class does not exist in this case: but what should bar the claim of seniority in right of primogeniture and good qualities? For there is no argument to such an effect, and MENU in fact mentions, that a *Sûdra* can have no wife of a different class, as a reason for equal partition; else it would be impertinent to insert a precept concerning marriage, that a *Sûdra* alone can have no other wife but one of his own class, under the title of Inheritance. Accordingly the maxim delivered by GÓTAMA (CLX), that the son of a *Vais'yâ* by a *Sûdrâ* woman shall, if virtuous, have an equal share with the son of the *Vais'yâ* wife, is pertinent. The virtuous *Sûdra* shall not receive an additional allotment in token of respect, if a superior brother be living: it is proper to affirm, that he can only have such a share with a brother of equal class. Thus some lawyers expound the law, and SRÍ CRISHNA TERCÁLANCÁRA concurs in that opinion.— But VÁCHESPATI BHATTÁCHÁRYA holds, that MENU enjoins equal partition *among the sons of a Sûdra*, merely to deny the portion of an eldest son in right of primogeniture alone, not to deny such an allotment in right of pre-eminent virtue; for VRĪHASPATI propounds the reason of it without discriminating classes, "he is venerable like their father" (XLV). CUL-LÚCABHATTA, JÍMÚTAVÁHANA, and other authors, deny the deducted allotment in right of primogeniture, but do not notice the allotment for pre-eminent virtue *in the case of a Sûdra*.

The text, which denies any other wife to a *Sûdra* but a woman of his own class, may be thus considered: "no other wife is ordained for a *Sûdra*;" that is, no other is suggested by the *Vêda*: it must not be asked, if a *Sûdra*, impelled by inclination, should nevertheless marry a woman of the sacerdotal or other superior class, as a *Brâhmana* marries a woman of the servile class, and a son be born of that marriage, what shall be his share? Marriages from inclination, or in obedience to the law, are authorized in the direct order of the classes, but on no account in the inverse order. Consequently, a marriage not authorized either by recorded or by traditional revelation is reprehensible;

prehensible ; and the son of such a marriage shall have no share, as will be hereafter mentioned under the head of Exclusion from Inheritance. The exposition of CULLUCABHATTA and the rest is accurate.

CLXI.

VRĪHASPATI :—Land received *as the reward of sacred literature*, must never be given to the son of the *Cshatriyá* or other wife of inferior class ; even if his father give it to him, the son of the *Bráhmaṇi* may nevertheless resume it after his father's death.

CLXII.

Vriddha MENU :—The sons of the *Bráhmaṇi* shall take the land which descends as a holy heritage ; but all the sons by women of twice-born classes shall succeed to the house and field successively inherited from ancestors.

‘ Land received *as the reward of sacred literature*, is the same ‘ with land descending as a holy heritage.’ This remark of JÍMÚTAVÁHANA is founded on the coincidence of the text of VRĪHASPATI. He thus explains the term used in the text : “ holy ” alludes to the *Vēda*, and signifies the study of it, and knowledge of its sense, by which gifts are obtained. *Neither should this be given to a son of inferior birth*, nor the land which has been obtained through *the pious veneration of the giver*, as suggested by MENU ; for that is in the nature of a pious oblation.

CLXIII.

MENU :—To *Bráhmanas* returned from the mansions of their preceptors, let him (*the king*) show due respect ;

respect; for that is called a precious unperishable gem, deposited by kings with the sacerdotal class.

‘ Or, this is forbidden by the one; that by the other. All land belonging to a priest is not a holy heritage: for the text recognises the claim of all sons by women of twice-born classes to the field inherited from ancestors, and only excludes the son of a *Súdrá* woman.’

A distinction is admitted between pious oblations and simple gifts. A donation consists in relinquishment, vesting property in another, after divesting the right of the owner; and that is characterised by the words “ I give,” or others to that effect: but a pious oblation consists in a grant for use, and is characterised by terms of humble salutation; and a thing which is offered as a pious oblation, must not be appropriated by the giver himself; for the contrary practice occurs in oblation to deities. If the offering be made to inanimate deities, after allowing a period for *supposed* enjoyment by the idol, such as one day and night, it must be given to *Bráhmanas*: but if the offering be made to the *Bráhma* himself, considered as a divinity, it is long enjoyed by him. Such, it is said, is JÍMÚTAVÁHANA’S opinion: but that is futile; for, were it true, the property would escheat to the king, after the death of the priest in honour of whom the offering was made: his sons would therefore be unentitled to the succession; and they could not have *even* a contested claim.

Is it not the purpose of a pious oblation, that it shall be enjoyed by him in honour of whom the offering is made? Now that is attained by a single act of fruition; for it is a rule, that the intention of the law, once fulfilled, is completely answered: hence, may not land be resumed by the king on a subsequent day? It should not be objected, that, were it so, why should he not resume it for his own benefit? since the law permits consecrated things to be given to no other, he ought to deliver the offering to a priest; it is therefore improper to resume it for his own benefit. Nor should it be objected, that, because the same person is in this case the priest and the *supposed* divinity, he is only entitled to long possession. Were it so, the right of the priest’s son to enjoy it after his demise, as his father’s representative, would

would be contested. Nor should it be objected, that, the priest in honour of whom the oblation was made becoming by death similar to an inanimate deity, the king may deliver it to any priest whomsoever. He and his issue are authorized to enjoy it, as land given to a daughter for her subsistence is enjoyed by her and her issue.

To the question proposed the answer is, why should it not be acknowledged as a gift, for the term demonstrative of respect is irrelevant in any other sense but that of donation? In fact, when provision is made for the maintenance of a daughter, that being given for the support of her and her issue, it is also enjoyed by her descendants *after her demise*. But this case is not similar, for the pious oblation is made in honour of one person alone. To this some reply, acceptance of a thing relinquished, with a view to the merit arising from that relinquishment, constitutes the receipt *of a present*; the relinquishment of a thing with a view to the enjoyment of it *by another person*, whence merit shall accrue *to the offerer*, is an act demonstrating pious veneration: hence relinquishment only is denoted by the respectful term *with which the oblation is presented*; it does not extend so far as to vest property in the other. The fourth case only denoting the purpose of allowing enjoyment to the man in honour of whom the oblation is to be made, he is not donee *as usually signified by the dative case*; but that case is *here* used under another rule. What is offered as a pious oblation, is as it were unowned property; but, being once enjoyed, the possessor gains a title by occupancy, and therefore it shall not be taken by any other person: this is established upon the consequence of the act. But after the demise of the grantee, it shall be enjoyed by his descendants, and no others.

‘Or this is forbidden by the one;’ from this land, received as a pious oblation, *the sons of inferior birth are excluded by the one*, namely by MENU (CLXII and CLXIII); from land received as a present, they are excluded by the other, namely by VRĪHASPATI. The sense (in the gloss on v. CLXII) is literal; for the term (*brahman*) is explained in the Dictionary of AMERA, *The Védas*, abstract essence, devotion, GOD, BRAHMÀ, Priest, Lord of created beings. The commentator obviates the supposition that ‘holy heritage’ may intend *generally* the heritage of

of a *Brāhmaṇa*, by adding, 'all land belonging to a priest is not a holy heritage.' For the text of *MĒNU* (CXLII) declares the general right of all *sons*, whether *Brāhmaṇas*, *Cṣhatriyas*, or *Vaiśyas*, to succeed to the land belonging to a *Brāhmaṇa*; that text being thus explained, the *Brāhmaṇa*, *Cṣhatriya*, and *Vaiśya*, shall succeed to the house which has successively descended from the paternal grandfather to the father, and from him to his sons. It should not be affirmed, that this text propounds the right of a son to succeed to the property belonging to a *Brāhmaṇa*, *Cṣhatriya*, and *Vaiśya* respectively. The property of a *Brāhmaṇa* alone is premised in the first part of that text (CLXII); and the precept that twice-born men shall succeed to their fathers would be unmeaning, since it must be also affirmed, that the son of a 'Sūdra man inherits land appertaining to his own father; but a 'Sūdra is alone excepted in that text. In proof of this the following verse is cited by *JĪMŪTAVĀHANA*.

CLXIV.

VRĪHASPATI:—The son of any twice-born man by a woman of the servile class is not entitled to partake of his landed property; he who is born in an equal class, shall take the whole: thus is the law settled.

Begotten on a woman of equal class, or born in the same class with his father. Land being mentioned generally, it appears that the son of the 'Sūdrā wife shall not participate therein, whether it have been received in a present or otherwise. Land not received in a present, is that which is acquired by purchase or the like. *JĪMŪTAVĀHANA* concurs in that exposition; but it must be remembered, that the sons of the *Cṣhatriyā* and *Vaiśyā* wives shall have a share of the land which has been acquired by purchase and the like.

The phrase expounded "land which descends as a holy heritage," may be explained, land accruing by gift on some account peculiar to a priest; it therefore comprehends the assisting to sacrifice, teaching the *Vēdas*, and receiving gifts from a pure-handed

handed giver. The delivery of land acquired by purchase is not peculiar to a *Brāhmaṇa*, but concerns all classes. The delivery of land acquired by the acceptance of a gift, concerns a *Brāhmaṇa*; for the law declares, “A *Brāhmaṇa* may acquire wealth by assisting to sacrifice, by teaching the *Vēdas*, and by receiving presents;” and the *means* of subsistence prescribed to the *Brāhmaṇa* are forbidden to others.

MENU :—A man of the lowest class, who through covetousness lives by the acts of the highest, let the king strip of all his wealth, and instantly banish.

A *Cshatriya* sometimes practises mendicity on failure of all other means of subsistence, and merely to preserve life; but it is not possible that his sons should thereby gain riches. **CHANDÉSWARA** also explains the term used in the text (CLXII), land gained by assisting to sacrifice and the like. What is received as a pious oblation, is also comprehended in the same term.

Others argue from the text admitting the title of the *Cshatriyā* and *Vaiśyā* to land inherited by ancestors without any specified exception, that the sons of the *Cshatriyā* and *Vaiśyā* wives succeed to land which was originally received in a present by the paternal grandfather or remoter ancestor, and had devolved on the father in right of affinity. Accordingly land which is acquired by the father, through the acceptance of a present, shall belong to the son of the *Brāhmaṇi*, not to the son of the *Cshatriyā* or other inferior wife; as is observed by **JÍMÚTAVAHANA**. How then do the sons of the *Cshatriyā* and *Vaiśyā* succeed to land which was acquired by purchase? Because there is no prohibition: “all the sons of women of twice-born classes, &c.” is merely a repetition: the former part of the text contains the direct precept. A secondary sense should not therefore be admitted; for it is weaker than the primary sense. The last part of the text of **VRĪHASPATI** (CLXI), “even if his father give it to him, &c.” supposes partition made by the father. Therefore the son of the *Cshatriyā*, or other inferior wife, cannot by any means have property, founded on consanguinity, in land which was gained by modes of acquisition peculiar to a priest. Then,

Then, must it not be considered as a waif? Not so; for it must be affirmed that the father's property was not divested, else it would not be said that "the son of the *Bráhmaṇi* may resume it after his father's decease;" for, otherwise, even a stranger might seize it. If his father give it to him out-right for the sake of the merit *accruing* from gifts, or for protection, or through favour, what shall be the consequence? It becomes the absolute property of the *Cshatriyá*, or other inferior son; for gift operates the divestiture of the former owner's property; and if none vested in another owner, it would be a waif. It is not reasonable to say that property is not in this case divested by donation, for no limitation is on any account admitted to the valid gift of an owner who is not disabled by insanity or the like. Thus some expound the law.

CLXV.

DÉVALA:—A *Nisháda*, being the only son of a *Bráhmaṇa*, shall have a third part of his estate; two shares shall be taken by the kinsman, remote or near, who performs the obsequies for the deceased.

2. On failure of kinsmen, those shares devolve on the preceptor, or on the pupil, who performs the obsequies; in the utmost difficulty *to find an heir*, let those shares be allotted to any person sprung from the same original stock.

A *Nisháda* is born from a *Bráhmaṇa* on a *Súdrá* wife, as mentioned under the title of Mixed Classes*. The whole estate being divided into three parts, he shall take one part, and the other two belong to the near kinsman connected by the funeral cake; or, on failure of him, to the remoter kinsman. The distinction between near and remote kinsmen will be explained. It may be thus elucidated: a near kinsman, connected by the funeral cake, is a father, or his descendant, and so forth; and the remoter kinsman is the grandfather's grandfather, and the rest.

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* MENU, Ch. X. v. 8.

He must be of the same class with the deceased, else he would not be preferable to the son. On failure of remote kindred, the preceptor succeeds; he alone performs the obsequies, and celebrates the *s'ráddha*. On failure of him, the pupil. In the utmost difficulty, on failure of all heirs from the near kinsman to the pupil, let those shares be given to any person sprung from the same original stock with the father of the *Nisháda*. The *Ret-nácara*, *JÍMÚTAVÁHANA*, and the rest concur in this exposition; the *Párijáta* adds, this concerns a virtuous *Nisháda*. The object of that remark is to remove the apparent inconsistency with the following text.

CLXVI.

MENU :—The son of a *Bráhmaṇa*, a *Cshatriya*, or a *Vaiśya*, by a woman of the servile class, shall inherit no part of the estate, *unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married*: whatever his father may give him, let that be his own.

Consequently this text of **MENU** relates to the vicious son of a *Súdrá* woman. But it is proper to consider it as only applicable when there is a son of a twice-born class; and it thus coincides with the text of the *Mahábhárata* above cited (CXLIII 4); and on this construction the son of a *Súdrá* wife has a specific portion then only when partition is made by his father; but after his father's demise, he is excluded from participation, if he have a twice-born brother; if there be none such, he shall take a third part: there is no difficulty on this interpretation. Accordingly **MENU**, having declared partition among sons of the four classes, and, in answer to the question, whether a greater portion may be given to the son of the *Súdrá*, on account of his filial piety or the like, when partition is made by the father? having denied that greater portion (CLXVII), proceeds to deny him even the tenth part when partition is made after the death of the father (CLXVI).

CLXVII.

CLXVII.

MENU:—But, whether the *Bráhmāna* have sons, or have no sons, *by wives of the three first classes*, no more than a tenth part must be given to the son of of a '*Súdrā*.

This tenth part is ordained when there are four sons of the four different classes; for it corresponds with a former text (CXL). In like manner it is reasonable that a '*Súdra* son should receive, in right of a certain degree of virtue, one share of the estate divided into seven parts and a half; for that coincides with another text (CXXXIX 4). Never is a tenth part only given to the son of a '*Súdrā* wife, when there is no son by the *Bráhmāni*; for that would contradict the text of VISHNU (CLIII). Again; the prohibition contained in a text of VRĪHASPATI (CLXIV) concerns a *Bráhmāna*, and relates to partition by a father. Many different rules being laid down according to the difference of class, but this containing no specified limitation, land cannot be properly included in the third part which is received by the son of a '*Súdrā* having no brother of another class. As for the supposition that the text of MENU (CLXVI) relates solely to the son of a '*Súdrā* woman not lawfully married, it is erroneous; for the *Mahábhārata* declares, that even the son of a '*Súdrā*, lawfully married, is not entitled to claim any portion *unless it be given by his father* (CXLIII 4). How can the expression, “whether the *Bráhmāna* have sons or have no sons,” be justified? for VISHNU* authorises a greater allotment than a tenth part, if he have no son *by wives of the three first classes*. A tenth part here intends the share prescribed for a son of that class, as above mentioned: hence, if the priest have no other sons, a third part or the like, to be substituted in place of the tenth part, *shall be allotted* to the son by the '*Súdrā*. Thus some authors expound the law.

CHANDÉSWARA, MISRA, CULLÚCABHATTA, VIJNYANÉ-SWARA,

* I find no text of VISHNU to that effect. Perhaps it may be an error of the transcriber writing VISHNU for DE'VALA. T.

SWARA, and the rest, explain the text of MENU (CLXVII), whether the priest have sons by wives of twice-born classes, or have no such sons. LACSHMÍDHARA remarks, if the father indulgently give any thing to his son by a 'Súdrá' woman, he shall not give more than a tenth part. According to this opinion, says CHANDÉSWARA, the phrase "a son by a woman of the servile class shall inherit no part of the estate," must signify that he shall have no part of the inheritance unless it be given to him by his father. The gloss on both lines expresses, 'if the father give any thing to his son by a 'Súdrá';' it is not distinguished whether a share or an indulgent gift be meant: it must therefore be understood as intending a share; for, in the case of indulgent gifts to other sons, no specific sum is ordained: it is easy to establish the coincidence of this text *with others*, by the equality of his regular share; and it is inserted in MENU's code, after premising the allotment of a share. To reconcile the apparent contradiction of saying, that "a son by a woman of the servile class shall inherit no part of the estate," while it is mentioned both before and after this text, that he shall receive such part of the estate as is allotted to him by his father, HELÁYUDHA and the *Pārijāta* supply the text with the words "unless given to him by his father." Participation is forbidden by the first sentence (CLXVI), alluding to a son very deficient in good qualities, and born of a 'Súdrá' woman lawfully married; it is forbidden by the second sentence, alluding to a son deficient in good qualities, and born of a 'Súdrá' woman not lawfully married. Hence, "whatever his father may give him, let that be his own;" meaning that which his father may give him through favour, whether it be less or more than a tenth part. But a father, who has no *other* son, must give a third part of the remainder, after deducting his own allotment, to a virtuous son by a 'Súdrá' woman lawfully married, and he shall take the residue for himself. The very same principle should be admitted in partition made after the death of the father. JIMÚTAVÁHANA considers the text of MENU (CLXVII) as forbidding the further participation of one who has already received a tenth part through his father's indulgence. VIJNYÁNÉSWARA delivers a similar exposition. JITÉNDRIYA expounds both texts as follows: "however great his father's partiality, he shall have no other portion than

than a tenth part.' According to his interpretation, the text, "no more than a tenth part must be given" (CLXVII), appears to relate to what is given through favour. But CULLŪ-CABHATTA reconciles the apparent contradiction in the texts of MENU (CLXVI and CLXVII), by different cases according to the degree of virtue, and according as the mother was, or was not, lawfully married.

CLXVIII.

VRĪHASPATI:—The virtuous and obedient son born of a 'Súdrá' woman unto a man who leaves ~~no~~ *legitimate* offspring, shall take a *provision for his* maintenance, and the kinsmen shall inherit the remainder of the estate.

'This, says CHANDÉSWARA, relates to the son of a woman not lawfully married;' for the subject is an unmarried woman. Else it would contradict the text of DÉVALA above cited (CLXV 1).

CLXIX.

GÓTAMA:—A son by a 'Súdrá' woman, born unto a man who leaves no *legitimate* offspring, shall, if he be strictly obedient like a pupil, receive a provision for his maintenance.

If he be strictly obedient like an apprentice, then shall the son of a 'Súdrá' woman receive a provision for his maintenance, out of the property of his father, who leaves no legitimate issue. "Apprentice" signifies a pupil. The author of the *Retnācāra* has this exposition: 'the son begotten on a 'Súdrá' woman not lawfully married, by a man belonging to one of the three first classes, who leaves no son by a woman of a twice-born class, shall receive a provision for his maintenance, (that is, some trifle as a stock whereon he may earn a livelihood by agriculture or the like,) provided he be strictly obedient, or show due respect,

‘ respect, like a pupil : and whatever had been given to him by his father must also be delivered, as ordained in the following text.’

CLXX.

SANC’HA and LIC’HITA :—A son by a *Súdrá* woman does not succeed to the paternal estate ; whatever his father gave him, that alone shall be his share : but let the father also give him a bull and a cow, some black iron, and *any* black grain excepting *tila*.

CHANDÉSWARA also expounds this text as in effect relating to the son of an unmarried *Súdrá*. The text of MENU (CLXVII), as some lawyers remark, may be also expounded as relating to the same subject.

CLXXI.

GÓTAMA :—Sons produced by women in the inverse order of the classes, shall have a similar allotment to that of the son produced by a woman of the servile class.

A son produced by a woman of another class shall have a mere provision for his maintenance, like one produced by a woman of the servile class, if he be strictly obedient to his parent, as a pupil to his preceptor. CHANDÉSWARA.

‘ Other class’ intends mixed classes. This is grounded on the text which expresses, “ All children produced by illegal connexions, are declared to have the same duties with those of the servile class.” But a *Mùrddhábhishtiā* and the rest are not treated as women of the servile class. In another place the same commentator delivers this gloss : ‘ to sons produced by women in the inverse classes, a subsistence shall be allotted in the same manner in which it is assigned to the son of a *Súdrá*, provided they be strictly obedient to their parents.’ A woman married in the
inverse

inverse order of the classes is one who is of a class superior to that of her husband, or one who has been espoused by him before another wife of a class superior to her own, a *Cshatriyā* before a *Bráhmaṇi*. MISRA says, 'a son begotten by a 'Súdra' or other man of inferior class, on a *Vaiśya* or other woman of superior class, shall receive the means of livelihood; that is, stock for agriculture and the like, such as a plough, a plough-share and so forth.' VISHNU propounds the share of a virtuous son begotten by a *Cshatriya* or *Vaiśya* on a 'Súdrā lawfully married.

CLXXII.

VISHNU:—A 'Súdra, being the only son of a twice-born man, shall take half his father's estate; the second half shall be appropriated in the same manner with the estate of one who leaves no male issue.

On this text it is remarked in the *Retnācara*, that a *Cshatriya* or *Vaiśya* is here intended by the term "twice-born man," with an exception to the *Bráhmaṇa*; 'for DÉVALA ordains the third part for the son of a priest by a woman of the servile class' (CLXV). It might be reconciled by referring the texts to the cases of a virtuous son, and of one deficient in virtue. The ample discussion of this subject would swell the volume unnecessarily; since the marriage of a woman unequal in class is forbidden in the *Cali*-age.

CLXXIII.

Vṛihat Náredīya purānā:—Undertaking sea voyages to circumnavigate the ocean; the carrying of a water-pot by a house-holder; the marriage of twice-born men with damsels unequal in class:

Premising these and other practices, it adds,

The wife have declared, that these practices must be avoided in the *Cáli*-age.

“ Undertaking

“ Undertaking sea voyages ;” circumnavigating the ocean.—
 “ The carrying of a water-pot ;” the carrying of it by a householder, as directed in ancient law, “ Two sacerdotal threads must be worn, and a water-pot full of water must be carried.” The learned so expound the text.

Aditya purána :— The marriage of twice-born men with damsels not of the same class ; the slaughter, in a religious war, of *Bráhmanas*, who are assailants with intent to kill :

Premising these and other parts of law, it proceeds,

These *parts of ancient law* were abrogated by wise legislators, as the cases arose at the beginning of the *Cali*-age, with an intent of securing mankind from evil :

The injunctions of infallible legislators are of equal authority with holy writ.

Does it not appear from the expression, “ abrogated by wise legislators, as the cases arose,” that the prohibition was not suggested by the scripture ; and is it not consequently improper ? Therefore it is added, “ the injunctions of infallible legislators, &c.” The term translated “ *injunction*,” literally signifies promise ; for, amongst other senses, AMERA states the term (*samaya*) as synonymous with *samvit*, which he explains a promise or contract. “ Infallible legislators” are such as are free from all defects. These defects are, natural ignorance, through which, *for example*, the Ganges may be mistaken for a vulgar stream ; inadvertency, through which a man may err in regard to the existence of a thing, even though it lay before him ; wilful deceit, as when he affirms that a thing is not, though it really be ; and weakness of organs, which prevents his clear perception of small objects. The words of a man free from these defects must be respected like holy writ ; for, not proceeding from a fallible man, they are similar to the precepts of the *Véda*.

CLXXIV.

YĀJNYAWALCYA :—A son begotten by a man of the servile class on his female slave, may receive a share by his father's choice; or, after the death of the father, the brethren shall allot him half a share.

“By his father's choice,” that is, by the will of his father, he may obtain a share in the distribution of the estate: this relates to partition made by the father. It is hereby intimated, that a share must necessarily be given to sons and other descendants of a wife equal in class. The son of a *‘Sūdra* by a female slave, or other *‘Sūdrā* woman not lawfully married, shall, with his father's consent, have an equal share with other sons.

JĪMÚTAVĀHANA.

Consequently, this is also intimated; if the father said, “let an equal share be given to this son,” then the *other* sons shall give him an equal allotment when partition takes place. After the death of the father, *if no such will had been declared*, the brethren, born of a wife legally married, shall allot him half a share; that is, half of such share as would have been assigned had his mother been legally married. Consequently a son by a female slave, not superior in class to her *‘Sūdra* master, shall obtain the moiety of a full share. Such is the opinion delivered in the *Mitācsharā* and *Retnācara*. The same legislator propounds the rule when there is no son by a woman lawfully married.

CLXXV.

YĀJNYAWALCYA :—Should he have no brother, he shall take the whole, unless there be a daughter's son.

If there be no son by a woman lawfully married, nor a daughter's son, the son of a female slave shall take the whole estate of the *‘Sūdra* father. Such is the exposition delivered in the *Retnācara*. MISRA explains the text similarly. *‘SŪLAPĀNI*,

RAGHU-

NANDANA and the rest expound "a share" (CLXXIV), an equal allotment with the rest of the brethren. It is consequently intimated, that an unequal distribution, unauthorized by the law, shall not be made among the sons of a woman legally married. But if there be a daughter's son, then, since he is a legitimate descendant, and since the son of a female slave is produced by a woman not legally married, it is proper they should have equal shares. Such is the opinion of RAGHUNANDANA; and JÍMÚTAVÁHANA delivers a similar exposition.

CLXXVI.

MENU:—A son begotten by a man of the servile class on his female slave, or on the female slave of his male slave, may take a share of the heritage, if permitted: thus is the law established.

"On the female slave of his male slave;" on the female slave of his servant. *The Calpateru.*

CULLÚCABHATTA has a similar gloss. But CHANDÉSWARA explains "his female slave," one who falls within the description of slaves made captive under a standard and the rest*; "the female slave of a male slave," his female slave of such a description, on whom a son is begotten by a male slave without being married to her. Both may be admitted to participate in the heritage. Thus is the law settled.

CLXXVII.

MENU:—A son begotten through lust on a 'Súdrá by a man of the priestly class, is even as a corpse though alive, and is thence called in law a living corpse.

This, says JÍMÚTAVÁHANA, relates to the son of a woman not legally married. But CULLÚCABHATTA considers it as relating to the son of a woman lawfully married: being incapable of fulfilling the purpose of obsequies for his father, and so forth, he is even as a corpse.

CHAP.

* Book III, Chap. I. v. 33.

CHAP IV.

ON

LEGITIMATE

AND

ADOPTED SONS.

SECT. I.—*On the several Modes of Filiation.*

WITH the intent of explaining particularly the right of sons legitimate, or adopted, to succeed to their father's estate, they are first described,

CLXXVIII.

MENU:—Of the twelve sons of men whom MENU, sprung from the self-existent, has named, six are kinsmen and heirs; six not heirs, *except to their own father*, but kinsmen.

2. The son begotten by a man himself in lawful wedlock, the son of his wife begotten in the manner before mentioned, a son given to him, a son made or adopted, a son of concealed birth or whose real father cannot be known, and a son rejected by his natural parents, are the six kinsmen and heirs:

3. The son of a young woman *unmarried*, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a 'Súdrá, are the six kinsmen, but not heirs *to collaterals*.

MENU sprung from the self-existent BRAHMÁ, and first of the fourteen MENUS : among those twelve sons of men whom he has named, the first six are pronounced kinsmen and heirs to collaterals: the result is, that, as kinsmen, they offer the funeral cake and water to *Sapindas* and *Samānōdacas* ; and as heirs, they succeed to the heritage of their collateral relations on failure of male issue, as well as to *the estate of* their own father. The last six may not take the heritage of any except their own father ; but they participate in his wealth, for it is declared *generally* without any exception, that *sons* inherit the estate of their father (CCXXIII a). When learned priests are mentioned as heirs to all persons *on failure of kin*, then, indeed, consanguinity is not the ground of their succession, *for* there is no other ground but their claim as learned priests : these, *on the contrary*, are kinsmen, and therefore perform the duties imposed by that relation, offering water and celebrating other rites. CULLÚCABHATTA.

But MÉDHATIT'HÍ, explaining the compound used in the text by the negative superadded to the apposition called *dwandwa*, says, " six are neither heirs nor kinsmen : " they are not heirs, except to their own fathers. That is wrong ; for BAUD'HÁYANA mentions them as kinsmen.

CLXXIX.

BAUD'HÁYANA :—Consanguinity, *denoted by a common family appellation*, belongs to the son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice married woman, a son self-given, and a son of a priest by a 'Súdrá.

And, in fact, Y'JNYAWALCYA, after premising the twelve sons,

sons, says, "on failure of those first mentioned, the next in order "give the funeral cake and claim the heritage" (CLXXXIX): hence it is evident, that all may offer the funeral cake for their own fathers; and the difficulty is reconciled by not admitting their right of offering it for any other. How can it follow from the terms of the text (CLXXXIX), that they are kinsmen to collaterals? There is no rule for all who partake of the same family name offering the funeral cake to collaterals; since *it would follow that* one who is not related within the degree of a *Sapinda* might offer it, even though he were an unconnected stranger.

CLXXX.

BAUD'HAYANA:—Participation of wealth belongs to the son begotten by a man himself *in lawful wedlock*, the son of his appointed daughter, the son begotten on his wife *by a kinsman legally appointed*, a son given, a son made *by adoption*, a son of concealed birth, and a son rejected *by his natural parents*.

This right of succession, from which the six first mentioned are excluded, must be understood of succession to the estate of any but their own fathers. Of whose family name do the six named with the son of the body (CLXXX) partake, of their natural, or their adoptive fathers? The answer is, they only claim the family of him whose son each of them becomes; for sons inferior to these, namely the son of an unmarried girl and the rest, claim the family of their adoptive father; why then should not the rest *have a similar claim*? The son of the body, of course, belongs to the same race *with his father*; and MENU, in speaking of a son given, explicitly declares that he must never claim the family of his natural father.

CLXXXI.

MENU:—A given son must never claim the family
and

and estate of his natural father: the funeral cake follows the family and estate; but of him who has given away his son, the funeral oblation is extinct.

The term "funeral oblation" intends that which is made for a father. If a son may not claim the family of his natural father, he may surely claim that of his adoptive parent. It is accordingly declared in the *Cálicá purána*, after premising "the son begotten by a man himself in lawful wedlock, the son of a wife begotten by an appointed kinsman, a son given, a son made by adoption, and the rest," that their investiture and other ceremonies must be performed by their own family.

CLXXXII.

Cálicá purána :—He, O lord of the earth! on whom the ceremonies should be performed under the family-name of his father, is not deemed a son until the ceremony of tonsure have been completed; he becomes the son of another, *under whose family name it is performed*:

2. Sons given and the rest, when the ceremonies of tonsure and the like have been performed on them by the *adopter's* own family, are deemed adopted sons; any other is called a slave.

In the first text "father" signifies the natural parent; "another" signifies any other *besides the natural father*. Affiliation therefore depends on the ceremony of tonsure; it does not require the several solemn rites, from the section of the navel-string, until the child be fed with rice: and that ceremony of tonsure is valid, even when performed at the season of investing the child with the mark of his class; but adoption is limited to the fifth year.

CLXXXIII.

CLXXXIII.

Cálicá purána :—But after their fifth year, O king ! sons given and the rest must not be adopted ; let the adopter take a boy five years old, and first perform a sacrifice for male offspring.

The sacrifice named in the text (*putrēṣṭi*) shall be performed, if the adopter maintain a perpetual fire ; but *only* an oblation with holy words from the *Vēda*, if he do not maintain *such* a fire : this will be explained in its place. If a boy five years old be regularly adopted, but the ceremony of tonsure be not performed, having been deferred, according to the usage of the family, until the season of investing the child with the mark of his class ; then, should the adopter die in the interval, is this son qualified to perform his obsequies ?

Some argue, from the letter of the text (CLXXXII 2), that, the ceremony of tonsure not having been performed by his *adopter's* own family, his affiliation is null, and therefore he is not qualified to perform obsequies. That is wrong ; for the text is propounded to declare void the adoption of a given son, on whom the ceremony of tonsure has been performed by the family of his natural father. Else, if all the ceremonies, including marriage, which is comprehended in the words “and the like,” cannot be celebrated, the affiliation would be invalid, and he would not belong to the family of *his adoptive father* ; and consequently the ceremony of tonsure and of investiture, even though performed in the adopter's family, would be invalid, or would be partly imperfect ; and the rites could not be performed at all. Adoption alone constitutes affiliation ; but the ceremony of tonsure performed by the family, to which he originally belonged, renders it essentially invalid, like a needless repetition. But this affiliation, *once effected*, is not cancelled by his naming his former family in performing a sacrifice, or in consecrating a pool. Birth caused by male seed and uterine blood is one ground of filiation ; the second birth, by investiture and other ceremonies, is equally a ground of filiation, by whomsoever performed. When he who has procreated a son gives him to

another, and that child is born again by the rites of initiation, then his relation to the giver ceases, and a relation to the adopter commences: this birth cannot afterwards become null by his erroneously reverting to his original family. The subject shall be further discussed. Thus some expound the law. To expatiate would be superfluous.

The twelve sons are enumerated in the same order by MENU and BAUD'HAYANA, but in a different order by others.

CLXXXIV.

GÓTAMA:—The son begotten by a man himself in lawful wedlock, the son of a wife begotten by an appointed kinsman, a son given, a son made by adoption, a son of concealed birth, and one rejected by his natural parents, are sons who inherit property.

2. The son of an unmarried girl, the son of a pregnant bride, a son by a twice-married woman, the son of an appointed daughter, a son self-given, and a son bought, claim the family of their adoptive fathers, and a fourth part of the paternal estate, if there be no son begotten in lawful wedlock, nor other superior claimant*.

CLXXXV.

VISHNU:—Sons are twelve: the first is the son begotten by a man himself on his own wife (*or the son of the body, for this agrees with VASISHT'HA*); the second is the son of a wife, begotten by a man of equal class on a widow duly appointed: she who

* The text was here cited partially; but in subsequent sections it is quoted entire. T.

among those who are heirs: the son begotten in lawful wedlock, the son of a wife begotten *by a kinsman*, the son of an appointed daughter, the son by a woman twice married, the son of a young woman unmarried, and a son of concealed birth, are six kinsmen and heirs, who belong to the same race with their fathers and paternal grandfathers, *who jointly inherit* the estate, and *offer* funeral cakes, and *who claim affinity* with *Sapindas**.

CLXXXVII.

HÁRITA enumerates sons in another order:—A son begotten by a man himself on a faithful wife, the son of his wife begotten *by a kinsman*, a son by a twice-married woman, the son of an unmarried girl, the son of an appointed daughter, and a son of concealed birth, are heirs to kinsmen.

2. A son given *by his parents*, a son bought, a son rejected, the son of a pregnant bride, a son self-given, and a son made *by adoption*, are not heirs to kinsmen †.

CLXXXVIII.

NÁREDA:—A son begotten by a man himself *in lawful wedlock*, a son begotten on his wife *by a kinsman*, the son of an appointed daughter, the son of an unmarried girl, the son of a pregnant bride, and a son of concealed birth,

2. A son by a twice-married woman, a son rejected,
a son

* The latter part was not quoted in this place; but in subsequent sections the text is cited entire. T.

† See the gloss after V. 219.

a son given *by his natural parents*, a son bought, a son made *by adoption*, and a son self-given, are declared to be twelve sons:

3. Among these, six are heirs to kinsmen; six not heirs, but kinsmen; their relative rank corresponds with the order in which they are here named:
4. On the death of the father, they succeed in their order to his wealth; on the failure of the best and the next best, let the inferior in order take the heritage.

CLXXXIX.

YÁJNYAWALCYA (after enumerating the son of the body, the son of an appointed daughter, the son of a wife *begotten by a kinsman*, the son of concealed birth, the son of an unmarried girl, a son by a twice-married woman, a son given *by his natural parents*, a son bought, a son made *by adoption*, a son self-given, the son of a pregnant bride, and a son rejected,) adds:—On failure of those first mentioned, the next in order give the funeral cake, and claim the heritage.

CXC.

DÉVALA (after enumerating the son of the body, the son of an appointed daughter, the son of a wife, the son of an unmarried girl, a son of concealed birth, a son rejected, the son of a pregnant bride, a son by a twice-married woman, a son given *by his natural parents*, a son self-given, a son made *by adoption*, and a son bought,) adds:—These twelve sons are considered as offspring *by birth*

birth or adoption; namely, sons begotten by a man himself, sons begotten by another, but fathered by him, sons acquired, and sons by their own consent:

2. Among these, the first six are kinsmen and heirs, the other six inherit only from their own father; the rank of sons is distinguished by the order in which they are enumerated.
3. All these adopted sons are pronounced heirs of a man who has no son by himself begotten; but, should a son of his body be afterwards born, there is no larger portion for them by reason of seniority.
4. Such among them as are of the same class *with that son*, shall have, as their share, one third of the property, *and two-thirds of it go to him*; but those of a lower class must live under him with a provision of clothes and food only.

CXCI.

YAMA:—Twelve sons are named by Sages, who know the principles of things; among these sons, six are kinsmen and heirs; six not heirs, but kinsmen:

2. The first is declared to be the son begotten by a man himself *in lawful wedlock*; the second, a son begotten on his wife *by a kinsman*; the third is the son of an appointed daughter: thus have the learned declared the law.
3. The fourth is a son by a twice-married woman; the fifth, a son by an unmarried girl; the sixth, a son of concealed birth in the husband's mansion:
these

these six give the funeral cake, and take the heritage.

4. A son rejected *by his father or mother*, the son of a pregnant bride, a son given *by his natural parents*, a son made *through adoption*, and fifthly a son bought, and *lastly* he who offers himself of his own accord;
5. These six, being of mixed origin, are kinsmen, but not heirs *except to their own father*.

In the *Cálicá purána*, sons are enumerated in the order propounded by MENU.

CXCII.

The *Cálicá purána*:—The son begotten by a man himself *in lawful wedlock*, the son begotten on his wife *by a kinsman*, a son given *by his natural parents*, a son made *by adoption*, a son of concealed birth, and a son rejected, take shares of the heritage.

2. The son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a 'Súdrá, are six sons who are *contemptible as dust*.
3. On failure of the first respectively, invest the next with filial rights.

(A distinction is subjoined:)—But appoint not to the empire the son of a twice-married woman, nor a son self-given, nor one born of a female slave.

According to NÁREDA, a son rejected *by his natural parents* is competent to inherit, preferably to a son given; but according to VISHNU, a son given is entitled to the heritage, to the prejudice of a son rejected *by his natural parents*. Similar discrepancies in the texts of various Sages will be reconciled in another place.

place. The nature of the affiliation must be first delivered; for, without understanding the character of their filiation, the comparative excellence of these sons cannot be discussed.

SECT. II.—*On the Son begotten in lawful Wedlock.*

CXCIII.

VASISHT'HA :—Twelve sons are shown in holy writ; the first is the son of the body, begotten by a man himself on his own wedded wife.

“ Shown in holy writ ;” by these words the admission of the law is ratified : therefore, *says the legislator*, we admit the authority of the scriptural precept alone *in this instance*. “ Begotten by a man himself ” excludes the son begotten on his wife by a kinsman ; and “ wedded wife ” excludes the wife self-given, who offers herself in these words, “ I am thine.” “ The first ;” since he is declared to be first in rank, he bars the succession of any other. A question which arises on this point will be discussed in treating of Appointed Daughters. “ The first is begotten by a man himself on his own wife ” (CLXXXV) ; a son begotten on the wife of another, by a man not duly appointed, falls under the description of a son by a twice-married woman ; he is ninth in VISHNU's text. This will be explained under its proper head. “ Wedded ” must be supplied ; for this text coincides with that of VASISHT'HA (CXCIII).

CXCIV.

MENU :—Him whom a man has begotten on his wedded wife, let him know to be the first in rank, as the son of his body.

CULLU

CULLÚCABHATTA has another reading of the first measure*, but the sense is precisely the same. He thus expounds the text: "him whom a man begets on his own wife legally married, let him know to be chief in rank, as the son of his body."

CXCIV.

DÉVALA:—That son who is begotten by a man himself on his wedded wife, is called the son of his body, chiefly sustaining his father's lineage.

"Chiefly sustaining his father's lineage;" an expression of praise, because he continues the race in its superior dignity.

CXCVI.

BAUD'HÁYANA:—A son who was begotten by a man himself on his wedded wife of equal class, let him know to be the *legitimate* son of his body.

"On a wife of equal class;" this denotes, that a legitimate son is one begotten by a *Bráhmaṇa* on a *Bráhmenī* woman. Accordingly it is inferred, by CULLÚCABHATTA, from the terms of this text, that the son of the body is one begotten by the husband himself on a woman of equal class.

CXCVII.

SANC'HA and LIC'HITA:—Let a priest take the hand of a woman equal in class; the bodies of his ancestors are born again of her: let him figuratively address his own soul, in the person of his son.

These Sages subsequently mention the form of address; "springing from successive bodies, &c."

CXCVIII.

* *Svā cshétrē sanscrítáyān tu*, instead of *sanscrítáyān tu bhāryáyām*.

CXCVIII.

SANC'HA and LIC'HITA:—"Ancestors seize the infant foetus produced from uterine blood; thou, my soul, art born again, that thou mayest here sleep in body.

2. "For the benefits conferred on parents, thou, my soul, art called son; because thou deliverest (*tráyasē*) from the hell called *put*, therefore thou art named son (*putra*)."

The meaning is; because the bodies of ancestors are born again of her, (that is, of the wife equal in class,) therefore thou springest from successive bodies. "Let the father figuratively address his own soul, in the person of his son." Consequently the son is even the same with the father: and the father indeed is son of some person, but still the same identity exists of him and his father. "Since thou sleepest in body*, therefore art thou born, although thou beest an *immortal* soul." Otherwise there could be no birth of a sempiternal spirit. Consequently the sense is, "thy birth is an union with body." "Thou, my soul, art called son, from the benefits conferred on thy father and mother:" that is, conferring benefits on thy father and mother, thou art called son. What benefits? The text proceeds, "because thou deliverest thy father and mother from *put* (a hell so called)." Or, thy father and mother indulgently call thee son: it is therefore fit that thou shouldst deliver from the hell called *put* thy father and mother, who confer a benefit on thee by becoming the authors of thy existence, which is obtained for the sake of thy performing *the several* rites during purity and impurity, and for the sake of enjoying the fruit of such rites. They design thee son, praising thee because thou dost perform this office. The procreation of a son upon a woman of equal class being alone applauded, it is intimated by SANC'HA and LIC'HITA, that they admit a legitimate son to be produced by a woman of equal class only.

CXCIX.

* Alluding to the derivation of *puruṣa*, animated being, and man especially. T.

CXCIX.

'APASTAMBA:—The sons of those who approach a woman of equal class legally espoused and not previously married *to another*, are concerned with religious rites, and may not be excluded from inheritance.

“Not previously married to another;” who has had no former husband; that is, no husband prior to him who has now espoused her; *in other words*, who has had no husband before him. A twice-married woman is thereby excepted. Consequently she who has been even verbally betrothed to another before him, falls not within this description. The term is so expounded in the *Pracā'a* and *Retnācara*. “Legally espoused;” the term is explained in the *Retnācara*, ‘wedded by the ceremony of joining hands, as ordained by the law.’ Some expound it, such as the law declares a fit match, not being related to his father within the degree of *Sapinda*, or *other prohibited degree of consanguinity*, or the like. “Are concerned with religious rites;” with the perpetual fire and the like: consequently these alone can be employed as substitutes in using the sacrificial fire, and in other duties incumbent on the father himself. This is the principal subject of the text. *The legislator adds*; “they may not be excluded from inheritance;” they must not be excluded from the former heritage. Such is the meaning, as explained in the *Retnācara*. These alone succeed to the heritage: consequently, 'APASTAMBA also declares that son only to be first in rank who is born of a woman of equal class *with her husband*. But there is no son superior in rank to the son begotten in lawful wedlock. If the son produced by a woman of unequal class were considered as a son begotten in lawful wedlock, the epithet “equal in class” would not have been inserted. YÁJNYAWALCYA also describes the son of the body as born of a lawful wife. MISRA expounds the term, ‘a woman equal in class, and lawfully married.’ For, in a gloss on another text of YÁJNYAWALCYA (CCCXCVIII), “wife” (*patní*) is explained one equal in class, and having precedence.

cedence. In illustration of which, RAGHUNANDANA cites the text of MENU (Book IV. v. XLVI.)

CC.

YĀJNYAWALKYA :—The legitimate son of the body is one who is produced by a lawful wife ; the son of an appointed daughter is equal to him ; and the son of a wife is one begotten on her by an appointed kinsman sprung from the same original stock *with her husband*, or by another person *duly authorized**.

In the gloss of the *Dīpacalīcā*, on this text, it is said, ‘ the son begotten by a man himself on a woman of equal class, lawfully married to him, is the son of his body.’ A woman of equal class, espoused in a legal form of marriage, is a lawful wife : he who is born of her is the first in rank, as the son of the body. These commentators, finding texts delivered by various Sages, the sense of which seems obvious, affirm, that the son of the body is one who is begotten by the husband himself on a woman of equal class. But CHANDÉSWARA does not concur in that opinion ; because, if that were the case, the son of a priest, by a woman of the military class, would not be included among the twelve sons. It should not be argued, that he will be the twelfth, as described by VISHNU (CLXXXV.) It is proper to consider the son by a *Sūdrā* as the twelfth, because he is mentioned as such by MENU (CLXXVIII and CLXXVII.) Again ; if the son produced by a woman of the military class, regularly espoused, were the twelfth, he would be inferior to all the rest ; for the twelfth son is described by every legislator as the lowest of all. But the son of her whom the law permits to be employed in acts of religion with her husband, cannot be exclusive of the twelve sons *enumerated* ; nor can he be lowest of all. The commentator therefore reconciles the seeming contradiction, *by saying*, “ wife
equal

* I cite the verse at large ; in the original, the different parts of it are quoted in different sections, under the heads to which they relate. T.

equal in class" here signifies a woman of a twice-born class married to a twice-born man, or a woman of the servile class to a man of the servile class; not a priestess alone married to a priest. The *Parijata* concurs in this exposition. A son begotten in lawful wedlock is universally considered as the legitimate descendant of his maternal grandfather and of his own father; he inherits property, and is evidently competent to perform the *śrāddha* and other rites. This subject has been sufficiently treated.

SECT. III.—*On the Son of an appointed Daughter.*

ART. I.—*On the Rights of an appointed Daughter, and of her Son.*

He is second according to YÁJNYAWALCYA; for, after describing the son of the body as one begotten on a lawful wife, he adds, "the son of an appointed daughter is equal to him" (CC). BAUDHÁYANA (CLXXX) likewise places him before the son begotten on a wife *by a kinsman*, and after the son begotten by a man himself *in lawful wedlock*. DÉVALA also names the son of an appointed daughter immediately after the son of the body.

CCI.

DÉVALA:—The son of an appointed daughter is equal to him; he shall inherit, as a son, the estate of his father and of his maternal grandfather who leaves no male issue.

It appears from the text of VRĪHASPATI, that the son of an appointed daughter is superior to the son begotten on a wife by a kinsman.

CCII.

VRĪHASPATI:—A son given, a son rejected, a son bought, a son made *through adoption*, and a son by a *Súdrá*; these, if pure by class, and irreproachable for their conduct, are held in a middle degree of estimation.

2. The son begotten on a wife *by a kinsman*, is condemned by good men; and so are the son of a twice-married woman, the son of a young woman unmarried, the son of a pregnant bride, and a son of concealed birth.

It follows that the rest are of superior rank. Now the rest are the son of the body, whose pre-eminence is universally admitted, and the son of an appointed daughter. The son self-given is not mentioned in the text: to count him among those of superior estimation, because a certain legislator has not declared that he is somewhat inferior to the son of the body, would be improper. The omission will be otherwise explained in a subsequent section.

NÁREDA (CLXXXVIII) assigns the third place to the son of an appointed daughter, and the second to the son begotten on a wife *by a kinsman*; and the appointed daughter *herself* is considered by VASISHT'HA as third in rank.

CCIII.

VASISHT'HA:—She who has no brothers acquires filiation, reverting to the family of her ancestors; the appointed daughter is considered as the third son, *but* equal to the son of the body, for she may perform his duties.

Reverting to the family of her ancestors;" she returns to the original relation, that is, she reverts, as a son, to the family of her father.

The *Retnācara*.

A

A daughter, leaving the family of her father, enters that of her husband, and bears children ; afterwards she reverts to the family she had quitted, and acquires filiation, by raising up issue to it. Consequently she is said to revert to the family, because she is bound to perform the duties incumbent on a son ; hence she is expressly said to become a son. It follows, that she is competent to inherit. The claim of her son, as suggested by former texts, will be hereafter considered.

CCIV.

SANC'HA and LIC'HITA :—The son of PRACHÉTAS has said, “the appointed daughter is like a son ;” her offspring, being the son of an appointed daughter, shall offer the funeral cake both for his maternal grandfather and for his own father ; there is no difference in the benefits conferred by a son and by a daughter's son : from this apprehension, a man should not marry a damsel who has no brother.

“Benefits ;” delivering his parent from the hell called *put*. “From apprehension ;” from the doubt whether or not her father has taken her as a son. Thus the *Retnâcara*. From this apprehension a man, who wishes to contract a marriage should not take a damsel who has no brother. This is one construction of the text.

A daughter appointed to raise up a son, is like unto a son ; that is, she is equal to him, because she performs his duties : so says DACSHA, the son of PRACHÉTAS. Her offspring is called the son of an appointed daughter : he shall offer the funeral cake both for his maternal grandfather and for his father. There is no difference between a son and a daughter's son, (that is, between the son of the body and the son of an appointed daughter,) in the benefits conferred by them ; as the son of the body delivers his father from the hell called *put*, so does the son of an appointed daughter deliver his maternal grandfather : and further,

since it is declared that her son delivers his maternal grandfather from the hell called *put*, he does not deliver his natural father: therefore, in the doubt whether she be an appointed daughter, let not a bridegroom espouse such a bride, but let him marry a damsel who has a brother. This is the whole meaning.

“Equal to him” (CCI); equal to the son of the body. The *Dīpacalīcā*, in explaining the text of *YÁJNYAWALCYA*, “the son of an appointed daughter is equal to him” (CC), has this remark; ‘he shall have an equal share with the son of the body.’ MISRA concurs therein.

CCV.

The *Brahme purāna*:—Such a daughter receives an equal share of the patrimony.

CCVI.

MENU:—But, a daughter having been appointed to produce a son for her father, and a son *begotten by himself* being afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for a woman.

By saying this, MENU shows that an appointed daughter may claim the heritage; and in the following text he describes her son as becoming a son’s son *in contemplation of law*.

CCVII.

MENU:—By that male child whom a daughter thus appointed, either by an implied intention, or a plain declaration, shall produce from an husband of an equal class, the maternal grandfather becomes in law the fire of a son’s son: let that
son

son give the funeral cake, and possess the inheritance.

CCVIII.

MENU:—Let the son of an appointed daughter offer the first funeral cake to his mother; the second, to her father; the third, to her paternal grandfather.

In making double oblations*, it is intimated, that a funeral cake is offered to the mother installed in the place of a father, and to the maternal grandfather in the place of a paternal grandfather; but if his natural father have no other son begotten in lawful wedlock, he must likewise offer the funeral cake for him, since he is also son of his natural parent.

CCIX.

MENU:—The son of a daughter, *appointed in the manner directed*, shall inherit the whole estate of his father, who leaves no *other* son†.

CULLÚCABHATTA expounds “father” his natural parent. He must therefore, of course, be admitted to present two sets of double oblations; but the ancestry in his maternal grandfather’s line, is the same with the ancestry in the line of the natural father of his natural mother‡. Or, like the son of a wife, considered as son of two fathers, he shall use two names in offering the same cake for a father. Consequently the maternal grandfather’s

M 3

line

* *Párvana*:—A *s’ráddha* with a double set of funeral cakes: three cakes are offered to the father, paternal grandfather, and great grandfather; and three to the maternal grandfather, his father, and his grandfather; and the crumbs of each set to the remoter ancestors paternal and maternal. T.

† The gloss compels me to alter the translation. See MENU, Ch. IX. V. 131. T.

‡ That is, the same who are treated as ancestors of the male line in one set, are also treated as ancestors of the female line in both sets of double oblations. See the first note of this page. T.

line shall have two funeral cakes in two different forms: this does not extend to the maternal grandfather's grandfather, for he does not belong to the first set; but the maternal line, ascending from the mother, is considered in two different lights.

It follows, from what has been stated, that the appointed daughter, not her son, is equal to a *true legitimate* son. The appointed daughter shall be described.

CCX.

MENU:—The son of a man is even as himself; and as the son, such is the daughter: how then, *if he have no son*, can any inherit his property, but a daughter, who is closely united with his own soul?

Again; the son of an appointed daughter is equal to a son's son. On failure of a son of the body, these two, *the appointed daughter and her son*, shall inherit the property, although there be sons of other descriptions; but if a son of the body be left, the son of the appointed daughter shall take, for his share, the seventeenth part, mentioned by HÁRĪTA and others (CCXIX). The right of the appointed daughter, and of her son, to inherit on failure of a son of the body, as mentioned by CULLĪABHATTA, must be considered as a right to the whole of the heritage, agreeably to the texts of MENU. The right of the son produced by an appointed daughter, to an equal share of the heritage, follows from the texts of YÁJNYAWALCYA and others; “the son of an appointed daughter is equal to the son of the body” (CC). It should not be argued, that, since the text of HÁRĪTA ordains a seventeenth part, therefore equal partition is not proper in this case; and the equality mentioned merely intends the exclusion of the son begotten on a wife *by a kinsman* and other inferior sons. The seeming contradictions are reconciled by referring the text of HÁRĪTA to the son of an appointed daughter deficient in virtue: and it is absolutely necessary to consider such texts as relating to deficiency in virtue; for the *Brahme purāna* mentions the fourth part of a share; and various texts show various allotments for the son of an appointed daughter. To assign an equal share to him, if he be equal in virtue, is therefore proper.

CCXI.

CCXI.

The *Brahme purána* :—The son begotten on a wife by a kinsman shall obtain a third part as his share; and the son of an appointed daughter, a fourth.

JÍMÚTAVÁHANA, VIJNYÁNÉSWARA, and the rest, as is remarked by some authors, explain the terms by the apposition called *carmadhāreya*, “a daughter appointed to be a son;” instead of “son of an appointed daughter.” But others argue, from the form of appointment as ordained by MENU, that the son of the appointed daughter thence appears to become the *adopted* son of the maternal grandfather. Marriage with an appointed daughter is censured; but if she were considered as the son of her own father, the marriage of an appointed daughter would not be reprehended, since nothing would prevent her son remaining as the issue of his natural father.

CCXII.

MENU :—He who has no son may appoint his daughter in this manner to raise up a son for him, saying: “the male child who shall be born from her in wedlock, shall be mine for the purpose of performing my obsequies.”

Therefore the son of an appointed daughter alone becomes the *adopted* son of his maternal grandfather (CCIV).

CCXIII.

BAUD'HÁYANA :—A boy born of a daughter expressly appointed *to raise up issue for her father*, is the son of an appointed daughter; any other is *merely* a daughter's son.

The participation of an appointed daughter, as mentioned by MENU (CCVI), is acknowledged on the authority of his text,

it does not follow that she becomes a son ; and the expression of VASISHT'HA, describing her as a son (CCIII), is merely a *lax* phrase : if both were considered as such, there would be fourteen descriptions of sons. Nor is there any want of argument on which to select one of two senses in preference to the other ; for the form of appointment denotes the filiation of the daughter's son, and oblations to ancestors would fail if it respected the daughter : consequently the son of that daughter is directed to offer the first funeral cake to his mother, (that is, to offer it, *even* at *Gayā*, before he presents one to his father ;) for the purpose of obviating the supposition that at *Gayā* he must perform the *śrāddha* for the paternal line, and afterwards perform it for the maternal ancestors, that order being ordained generally in the *Vāyu purāna*. Hence it appears that the son of an appointed daughter shall always first perform the *śrāddha* for the maternal line. He is called the son's son of his maternal grandfather, because he is produced from one begotten by that ancestor. The appointed daughter shall only take the heritage if she have no son ; and high rank is ascribed to such a daughter, because she may become mother of a son *adopted by her father*. The family, claimed by the son of such a daughter, is that of his maternal grandfather, *for it is so expressed in the text of GÓTAMA* (CLXXXIV₂) ; and the text of SANC'HA and LIC'HITA (CLXXXVI) coincides with that of GÓTAMA, since the word "father" suggests the husband of the wife *on whom a son is begotten by a kinsman*, and other *adoptive fathers*, and since the son of concealed birth is common to both texts. It is intimated by the text of YÁJNYAWALCYA (CC), that the son of an appointed daughter shall have an equal share with the son begotten in lawful wedlock ; but he bars the inheritance of every other son : else the phrase, "on failure of the first of these, the next in order shall give the funeral cake, and take the heritage" (CLXXXIX), would be inaccurate. It should not be objected, that the equal participation of the appointed daughter alone is propounded by MENU (CCVI), because the mention of an advanced share in right of primogeniture would otherwise have been omitted ; consequently the equal participation of her son being established from parity of reasoning, the expression "shall give the funeral cake and possess the heritage," must be explained as signifying that he shall inherit the whole estate *on failure of a son*.

son begotten in lawful wedlock. Even though unequal partition were made, it might be questioned whether a portion should not be allotted to the first-born: for instance, the portion of an eldest son is allotted in right of primogeniture; it may be therefore questioned whether the fourth part or the like shall not be similarly allotted in her right as an appointed daughter, or in right of her son: to obviate this doubt, MENU declares that the division of the heritage must be equal; that is, it must be made without any allotment in right of primogeniture. Accordingly DÉVALA (CXC 3 and 4) *in such cases* forbids the allotment of any portion in right of seniority.

But others hold, that the text of MENU does not express "he shall be my son;" but, "he shall be mine for the purpose of performing my obsequies;" (CCXII). Consequently the daughter alone is considered as his son; and her son is considered as his son's son; and the descendants of her son are considered as the *remoter* descendants of her father. But the natural father of her son, and his forefathers, are considered as ancestors in a secondary degree, like a maternal grandfather. "He shall inherit, as a son, the estate of his father and maternal grandfather who leaves no male issue" (CCI); "as" is employed in the sense of similarity; "who leaves no male issue" refers to the word "father." The double set of oblations shall not be offered by him for his natural father, since he is not related to different persons in the degree of a son: for a man appointing his daughter *to raise up issue for him*, gives her to a son-in-law; that husband in a manner consents to relinquish every right, and her father gives her *to him* merely to be enjoyed: the son, produced by her, does not revert to the family of his natural father for any occasion he may find to claim his son. Has not the father, who furnishes the seminal fluids, an equal claim to the son produced therefrom, as is expressed in the text, "a son formed of seminal fluids and of blood, proceeds from his father and mother" (Book II, Ch. iv. V. 8)? It should not be objected, that here, as in the case of a son begotten on a wife *by a kinsman*, the offspring belongs to the owner of the field, not to him who cast the seed. If there be an express agreement, the produce of the seed may be claimed by the owner of the field: but in this case, although the son-in-law knew not that she was appointed to raise up issue for her father, still

still her male child is truly the son of an appointed daughter. That is intimated by SANC'HA and LIC'HITA (CCIV). To the question proposed the answer is, No ; for the matter must be settled agreeably to the practice which prevails in the case of produce, where the intention of the party has been declared in these words, " by whomsoever seed may be sown, the produce of this my field shall be mine : " in that case, if an agreement have been made, the owner of the seed shall take half the produce ; but if no express agreement have been made, the owner of the field shall have the whole produce. Or, the practice which subsists in respect to cattle, may be admitted in the case of an appointed daughter.

CCXIV.

MENU :—As with cows, mares, female camels, slave girls, milch buffaloes, the goats, and ewes, it is not the owner of the *bull, or other* father, who owns the offspring ; even thus is it with the wives of others.

2. They who have no property in the field, but, having grain in their possession, sow it in soil owned by another, can receive no advantage whatever from the corn which may be produced.
3. Should a bull beget a hundred calves on cows not owned by his master, those calves belong solely to the proprietors of the cows : and the strength of the bull was wasted,
4. Thus men, who have no marital property in women, but sow in the fields owned by others, may raise up fruit to the husbands ; but the procreator can have no advantage from it.
5. Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land-owner ; for the receptacle is more important than the seed.

But

But there is this difference, that the connexion *of the produce with the receptacle* is inferior to its connexion with the seed.

This appointed daughter is mentioned by MĒNU separately from the thirteen sons. She is not male, and therefore she is not placed under the same head with sons. The son of an appointed daughter is mentioned by other Sages, as the son self-given is omitted by one and noticed by another. According to this opinion, as the son's son inherits on failure of the son, so, on failure of the appointed daughter, her son *inherits the estate*. It should not be objected, that, if two daughters be so appointed, and one of them decease, the other would have an equal title with the son of the deceased daughter. It may be so, if authorized by the law,

CCXV.

VṚHASPATI:—One alone, namely the son of the body, is declared to be owner of the wealth *left by his father*; an appointed daughter is equal to him; but the other sons shall only be maintained.

The text of VASISHT'HA concurs in describing the appointed daughter as affiliated (CCIII). But is not this inconsistent with the form of appointment mentioned by VASISHT'HA? for he acknowledges the son of the appointed daughter to be the adopted son *of her father*.

CCXVI.

VASISHT'HA:—“ This damsel, who has no brother,
“ I will give unto thee, decked with ornaments;
“ the son, who may be born of her, shall be my
“ son.”

No; for the second word “ son ” here signifies descendant; and, since the offspring of the daughter is the descendant of her father, it follows that she, becoming the root *of that lineage*, is considered as similar to a son. In fact, the appointed daughter becomes a son when the declaration runs in this form, “ this daughter shall raise up offspring to me, as if she were my son; ”
and

and her claim to the family of her father remains unaltered. But her son alone is considered as the son *of his maternal grandfather*, when the declaration runs in this form, “her son shall be my son;” and in this case, her son, instead of herself, belongs to the family of his maternal grandfather. In MENU’s opinion, the appointed daughter is not qualified to offer the double set of funeral cakes and the like; for, in fact, she is a woman. The mother, maternal grandmother, and maternal great grandmother, compose her son’s maternal line; the mother, maternal grandfather, and maternal great grandfather, his paternal line; and the maternal grandfather and so forth, ascending to the third degree, the line of his maternal grandfather: in some cases, the same person must be acknowledged to hold a double relation. But, according to other opinions, the mother, maternal great grandmother, and maternal grandfather’s grandmother, compose the maternal line; the maternal grandfather and so forth, ascending to the third degree, the paternal line; and there is no maternal grandfather’s line, for it is unacknowledged by the law. It should not be argued, that the maternal grandmother is considered as a mother, because the following verse exhibits a daughter appointed with the concurrence of his wife ‘SETARÚPÁ, by MENU, sprung from the self-existent. Since there is nothing to prevent the maternity of the natural mother, the maternity *of another* is merely figurative, like that of a stepmother.

‘*Srī Bhāgavata* :—To RUCHI, O king! with the consent of ‘SETARÚPÁ, he gave ‘ACÚTI, imposing on her the duty of an appointed daughter, although she had brothers living.

The superiority of the son produced by an appointed daughter, compared with the son begotten on a wife *by a kinsman*, is founded on his not being procreated by an adulterer. For this cause the second place is assigned to him by YÁJNYAWALKYA and others: but VASISHT’HA and the rest assign him the third place, supposing the case of his inferiority in virtue, compared with the son of a wife begotten *by a kinsman* duly authorized; but not considering him as inferior, because the seed and field both appertain

appertain to another: for the right of obtaining offspring from this woman is not forfeited, any more than the property of the owner in a thing pledged for use.

CCXVII*.

Brahme purāna:—The son begotten by a man himself in lawful wedlock, even though last born, shall enjoy the whole of the estate: let the son of a wife begotten by a kinsman obtain a third part as his share; and the son of an appointed daughter, a fourth:

2. The son made by adoption shall have a fifth part; the son of concealed birth, a sixth; the son rejected, a seventh; and the son of an unmarried girl, an eighth:
3. The son of a pregnant bride takes a ninth part; the son bought, a tenth; the son by a twice married woman, the next share, or an eleventh part; the son self-given, a twelfth;
4. And the son by a 'Sūdrā enjoys a thirteenth part of his father's estate.

How shall the partition be made? Not by allotting to the son of a wife so much as is a third part of the whole estate; to the son of an appointed daughter, a fourth of the whole; to a son made by adoption, a fifth of it; and so on progressively down to the son by a 'Sūdrā: for, were it so, no share would remain for the son of the body and the rest. Thus, if there happened to be sons of twelve descriptions to inherit an estate of fifteen *suvernas*: and five *suvernas* were given to the son begotten on the wife by a kinsman:

* The first verse, a part of which has been already quoted at V. 211, is cited at length in this place; the rest are occasionally quoted in subsequent sections:—I insert the whole for a general view of the shares allotted to the different sons, combining the dispersed quotations, and correcting them from the *Calpa drumā*, where the text is cited at full length. T.

kinsman : three and three quarters to the son of an appointed daughter ; three to a son made *by adoption* ; and two and a half to the son of concealed birth ; something more than two *suvernas* ought to be given to a son rejected *by his natural parents* : but this cannot be made good. What then would be the situation of the rest ? It should not be said, that, dividing the whole of the wealth into three parts, the son of a wife may take one ; and next, dividing the residue into four parts, the son of an appointed daughter may take one such part ; and the partition may proceed in this manner. For, after the last, namely the son by a *Súdrá*, has taken his thirteenth share, there would be no person to take the remainder, nor any fixed rule to determine the share of a son begotten in lawful wedlock : and if the son of the body take that residue only, his share would be very small. Nor should it be argued, that, after the death of the father, the son begotten in lawful wedlock succeeds to the whole estate, but shall give the other sons, if such there be, the shares which the law assigns to them : but, if there be no son of the body, the son begotten on a wife by a kinsman shall take one part out of the three, and the *collateral* heirs shall take the residue ; or if there be sons of other descriptions, shares shall be allotted to them, as ordained by the law, out of that residue. *On the contrary*, if there be sons of every description, the rest have no title to any part of the estate, the whole of which is in the first place taken by the son of the body. The seeming difficulty is thus reconciled : if there be a son begotten in lawful wedlock, he alone shall take the whole : but an only son of another description being left, that son, if he were begotten on the wife by a kinsman, shall take one part out of three ; if he be the son of an appointed daughter, a fourth part. Such is the order of proceeding. But if there be sons of many descriptions, the texts of SANC'HA and LIC'HITA and the rest (CLXXXVI, CCXLVII, &c.) are applicable instead of the present text.

The estate shall be divided into ten parts for these sons (*namely for those mentioned in the text CLXXXVI 2. See V. ccxlvii*) : two shares must be allotted to the father ; two to his son begotten in lawful wedlock ; three to the son begotten on his wife by a kinsman, and to the son of his appointed daughter, and one each

each to the *three* others. The first term in the text (*vicalpa* or alternative) *here* relates to the rule of partition.

The *Retnâcara*.

Kinsmen are those who belong to the same race, and who share the duty of offering funeral cakes and water; heirs are such as participate in the estate. The lawgiver himself explains the words "kinsman" and "heir," "one who belongs to the same race with his father and paternal grandfather, &c." The paternal grandfather is mentioned for the sake of his estate *which is to be divided*, and for the sake of the *pârvana* and *îrâddha* which are to be performed. The distribution of ten shares is made by the father for the property left by the paternal grandfather. But after the death of the father, his own acquired property, and, *in his life time*, the residue of it, after he has taken a considerable part for himself, must be divided into eight shares, of which two belong to his son begotten in lawful wedlock; one and a half to the son of his wife begotten by a kinsman; one and a half to the son of his appointed daughter; (*for it is suggested, that partition must be made without admitting any disparity between these two*): and one share each shall be allotted to the rest, namely to the son by a woman twice married, to the son of a young woman unmarried, and to the son of concealed birth. What becomes of the son given, the son made *by adoption*, and the rest? It is inferred from the text, that food and raiment only shall be allotted to them: and this must be understood when the son given and the rest are not of equal class *with their adoptive father*.

But MISRA remarks, that 'MENU and all other lawgivers declare the son begotten in lawful wedlock to be heir of the whole estate, although there be sons of other descriptions; the same legislators also mention the allotment of shares to those other sons: this seeming contradiction must be reconciled by saying, that if the son of the body be virtuous, he alone shall succeed to the whole estate; but if he be deficient in good qualities, and the rest be virtuous, the estate shall be distributed in the mode proposed.' That is liable to objection; for no specifick share is mentioned in the *Brahme purâna*, for a son begotten in lawful wedlock but deficient in virtue; and there is no difficulty in explaining the phrase "shall enjoy the whole estate" (CCXVII),

(CCXVII), as signifying that he shall take a full share. "If there be many similar *claimants*, all share the estate." This shall be *hereafter* discussed.

"Claim the family of *their adoptive fathers*" (CLXXXIV 2) ; they belong to the same race ; they perform the duties incumbent on a son, offering the funeral cake and water and so forth, and are therefore described as claiming *the family of their adoptive fathers*. The son of an unmarried girl and the rest are here described as claiming the family, to forbid their participation in the estate, if there be any one of the others, namely the son begotten in lawful wedlock and the rest *who are mentioned in the first text*. They shall have a fourth part of the estate, *on a partition made* during the life of the father, if there be no son of the body or other *son of the first series* : but, if the father decease leaving no son born in lawful wedlock, they severally succeed to the whole estate in *regular* order. The *Retnācara*.

In the order specified in the same text ; for he has not mentioned whether the order be that of the words or of the sense ; but since legislators differ on this point, the order specified by them cannot be here adduced.

The form of partition is as follows : when the distribution is made by the father, his son born in lawful wedlock shall take a full share ; the son begotten on his wife by a kinsman, and other sons *of the first series*, shall take a third part of a share ; the son of an unmarried girl, and others *of the second series*, shall have food and apparel only. But if there be no son of the body, the son of the wife shall have a full share, and a son given and the rest shall take the third part of a share, but the son of an unmarried girl and the rest shall have a maintenance only. Should there be no son *of the first rank* including one of concealed birth, then the son of an unmarried girl and the rest, if such there be, shall all take a fourth part ; consequently the father shall have eight times as much, *that is, double what is allotted to the son rejected*. But the father being dead, the son of a wife begotten by a kinsman, and other sons of the first series, shall have a share equal to a third part of what is allotted to the son begotten in lawful wedlock ; and the son of an unmarried girl, and others *of the second series*, shall obtain a maintenance only : but, if there be no son of the body or the like, the first in rank among sons of the second

second series, who do survive, shall take the whole estate ; but another *inferior* son shall have a share equal to a third part. The son of a wife begotten by a kinsman does obtain a third part, if there be a son of the body : but whence is it deduced, that the son of a pregnant bride shall have a third part, if the son of an unmarried girl be *the principal heir* ? His third share is deduced from the text of DÉVALA (CXC 4), such participation not being mentioned by GÓTAMA. It should not be argued, (because GÓTAMA describes the sons of the first series, from the son begotten in lawful wedlock, down to the son of concealed birth *, as inheriting property ; and the son of an unmarried girl, and others of the second series, as entitled to a fourth part of the paternal estate, on failure of sons begotten in lawful wedlock and the rest ;) that they ought to share equally. Were it so, the observation in the *Retnácara*, that they severally succeed to the whole estate in regular order, would be impertinent. It is no where seen, that a son of a wife begotten by a kinsman, and other inferior sons, share equally with the son of the body ; for that is *virtually* denied by a text above cited (CXC). Or the text of the *Brahme purána* may be only applicable during the life of the father, in this mode : when partition of property left by the paternal grandfather is made by the father, a share equal to a third part of half what is received by the father shall be allotted to the son of his wife begotten by a kinsman, a fourth part of such a moiety to the son of an appointed daughter, and one such moiety to his son begotten in lawful wedlock ; partition may proceed in this form : and the phrase “ shall enjoy the whole ” may signify, shall have a full share, *the father receiving two shares*. But the father being dead, the son begotten on his wife by a kinsman shall have an allotment equal to a third, and the son of his appointed daughter one equal to a fourth, part of what is received by the son begotten in lawful wedlock ; and the partition may proceed in this mode. For instance, if the father receive twenty-four *suvernas*, the son of his body shall receive twelve ; the son of his wife begotten by a kinsman, six ; the son of his appointed daughter, four ; and the son made by adoption, three *suvernas*, and so forth : or the son of his wife shall receive four ; the son of his appointed daughter, three *suvernas* ; and so forth.

VOL. III.

N

If

* Down to the son rejected. See the text CLXXXIV.

If there be no son begotten in lawful wedlock, but a son of the wife begotten by a kinsman, a son of an appointed daughter, and a son made *by adoption*; in that case the son of the wife inheriting the whole estate as next in succession, what share belongs to the son of an appointed daughter? It should not be said, he shall have a fourth part only, as suggested by the text (CCXVII). That must be understood, from the subject of the ordinance, to mean only the fourth part of the allotment given to the son begotten in lawful wedlock. Nor should it be said, that, the son of the wife being advanced to the place of the son begotten in lawful wedlock, and the son of an appointed daughter and the rest being each raised one step, they shall receive a third part and so forth. There is no law to that effect. To the question proposed, the answer is: the same disparity of allotments which took place between a son of the wife and a son of an appointed daughter when there was a son of the body, shall also take place in the present instance: for example, a share one third less than the allotment given to the son of the wife shall be assigned to the son of an appointed daughter; six *suvernas* being received by the son of the wife, a share diminished by one third (or two *suvernas*), and consequently amounting to four *suvernas*, shall be allotted to the son of the appointed daughter. The same should be understood in respect of a son made *by adoption*, and the rest; and a similar method may be observed, when the son of an appointed daughter, or another son of lower rank, is principal heir.

The son of an appointed daughter is described in the *Brahme purāna* as inferior in rank to the son of a wife begotten by a kinsman; and this must be understood when the son of the wife is procreated by a man of the highest rank. He is described by YAJNYAWALKYA as superior to the son of the wife; and this must be understood when the appointed daughter is given to a bridegroom of the highest rank. If both are derived from the highest origin, and are both equal in merit, it must be held reasonable, that a third or a fourth part should be equally allotted to each. The text of SANC'HA and LIC'HITA (CCXLVII) is applicable when both are derived from the highest origin, and are equal in merit; but the form of distribution is there propounded, supposing no disparity between them. The very low place assigned by GÓTAMA to the son of an appointed daughter, is proportionate

portionate to the decline of virtue. It is observed in the *Retnācara*, that this allotment of a fourth part (CLXXXIV) supposes the son to be transcendently virtuous; the *Brahme purāna* supposes them imbued with bad qualities. But in what respect is the rank, or the allotment, ordained by GÓTAMA for the son of an appointed daughter, superior to that which is directed in the *Brahme purāna*? for the allotment of a fourth part is only ordained on failure of sons begotten in lawful wedlock, and the rest, but is allowed in the *Brahme purāna*, although there be a son of the body or the like, since the case of failure of sons begotten in lawful wedlock is not there mentioned, and precedence is there allowed to the son of the appointed daughter above the son made *by adoption*. It should not be argued, because the son of the body is mentioned as taking the whole succession, that the son of the wife shall only have a third part, and the son of an appointed daughter a fourth, when partition is made by a father who has no son of his body. It is absolutely necessary to limit the meaning of the phrase “shall enjoy the whole;” else the father would be deprived of all participation. Accordingly DÉVALA says, “such among them as are of the same class shall have, as their share, one third part of the property” (CXC 4). Having premised “should a son of the body be afterwards born,” he propounds a short rule of general import concerning their allotments. It should not be affirmed, that this text bears a different import because the order varies. Partition, varying with different degrees of virtue, being admitted for the sake of the coincidence with other texts, the son given and the rest, being deficient in virtue, would have a third share, if there be a son of the body; and the same sons, being eminent by their good qualities, would have no share; which would be an unjust disparity. Nor should it be affirmed, that the text of the *Brahme purāna* relates to the son of a wife begotten by a kinsman, and other sons unequal in class. CÁTYÁYANA declares, that sons unequal in class are only entitled to food and apparel.

CCXVIII.

CÁTYÁYANA:—A son of the body being born, the adopted sons of the same class take one third as
 N 2 their

their portion ; but those of a different, *that is, of a lower* class, are entitled only to food and raiment.

Is not the particular distribution, as mentioned in the *Brahme purāna*, inconsistent with the allotment of one third part, as ordained by DÉVALA and CÁTYÁYANA ? It should not be said, that the precepts of DÉVALA and CÁTYÁYANA relate to the case of a virtuous son, and the *Brahme purāna* to the case of a son deficient in virtue. Were it so, the son of the wife and the rest being naturally equal, it would have been said, “ a virtuous son shall obtain a third part as his share,” to show the distinction to be founded on good qualities, instead of saying, “ the son of a wife begotten by a kinsman shall obtain a third part as his share.” To the question proposed some reply, a third part is mentioned as the principal allotment, for the sake of illustration. Consequently the general rule of partition must be drawn from the *Brahme purāna* : the same, to whom the first rank is assigned in the *Brahme purāna* on account of his eminent virtue, is placed in a middle or low rank by another author, supposing the case of his deficiency in virtue. Hence the same share which is ordained for a son given and the rest, on the supposition of their possessing good qualities, is allotted to the son of an unmarried girl and the rest, if they possess such good qualities. Such is the difference in the opinions delivered by various Sages. A full share must be therefore allotted to the son of the body ; participation must be allowed to the son of an appointed daughter ; a fourth part of such a share must be given to the son of a wife begotten by a kinsman ; a fifth, to the son of a young woman unmarried ; a sixth, to the son of concealed birth ; a seventh, to the son rejected by his natural parents ; an eighth, to the son of a pregnant bride ; a ninth, to the son by a woman twice married ; a tenth, to the son given ; an eleventh to the son self-given ; a twelfth, to the son made *by adoption* ; a thirteenth, to the son bought ; and a fourteenth, though not expressly mentioned, to the son by a *Súdrá*, else he would be excluded from participation : such is the intention of DÉVALA. The meaning of other legislators, say these lawyers, should be similarly explained. VÁCHES-

PATÍ also remarks, that other lawyers refer the allotment of a third part, ordained by CÁTYÁYANA, to the case of a son given, who is transcendently virtuous, because it coincides with the allotment directed in the *Brahme purāna* for the son of a wife begotten by a kinsman. Hence the rest must certainly have different allotments, not all a third part. Consequently, the remark in the *Retnācara*, that this allotment supposes sons transcendently virtuous, must relate to the son of a young woman unmarried, and the rest.

CCXIX.

HÁRÍTA :—Dividing the property, let a twenty-first part be given to the son of a young woman unmarried; a twentieth, to the son by a woman twice married; a nineteenth, to the son of concealed birth; an eighteenth, to the son of a wife begotten by a kinsman; a seventeenth, to the son of an appointed daughter; and the remainder, to the son of the body.

If the father be dead, a twenty-first part of the whole property shall be given to the son of a young woman unmarried; but in his life-time, a twenty-first part of the share allotted to the son begotten in lawful wedlock. Such is the form of partition ordained by HÁRÍTA. The term employed (*múshyāyān'a*) is explained in the *Retnācara*, son of concealed birth. These sons are mentioned by HÁRÍTA, as occupying the first rank (CLXXXVII).

LACSHMÍD'HARA explains the terms of the text last cited, "heirs to kinsmen;" that is, they take the heritage of collaterals, such as paternal uncles and the rest. The term which occurs in that text (*jahasādrishṭa*) signifies a son made by adoption. This lawgiver allows them food and raiment only, on the supposition of their belonging to a lower class, or on that of their great deficiency in virtue.

According to this legislator, the son of an appointed daughter is second in rank, for he is so placed in the allotment of shares. By one authority he is placed in a very low rank, supposing the

case of his great deficiency in good qualities. Consequently, if the son of a young woman unmarried, or the son made *by adoption*, be virtuous, then, the son of an appointed daughter, being very deficient in good qualities, shall not succeed to the whole property; but on failure of sons, *from the son of the body*, to the son by a twice married woman, he alone shall succeed to the estate. Such is the opinion of GÓTAMA (CLXXXIV). Other opinions must be reconciled in a similar manner. It would be useless to investigate the distinctions of degrees of virtue, which must depend on very subtle reasoning; such an inquiry would *unnecessarily* enlarge the volume, and is therefore omitted. But, in fact, the son of an appointed daughter is either second or third in rank, according to the degree of virtue by which the son of the wife begotten by a kinsman is distinguished; for he is so placed by MENU, YÁJNYA-WALCYA, NÁREDA, VRĪHASPATI, BAUDHÁYANA, VISHNU, HÁRĪTA, DÉVALA, VASISHT'HA, SANC'HA and LICHITA, YAMA, the *Brahme purána*, and the rest. Consequently, if there be left both a son of the wife begotten by a kinsman, and the son of an appointed daughter, he alone who is virtuous shall inherit; but if both be equally endued with good qualities, *the son of the appointed daughter* shall alone inherit, for he was not begotten by an adulterer. It should not be argued, that the son of the wife, being produced from the man's own field, is more intimately connected *with his adoptive father*. The father has not lost his right to obtain offspring through his appointed daughter; and the son of that daughter is *mediately* produced from the man's own field, *the mother of that daughter*. Nor should it be argued, that the son of that wife is begotten by one duly appointed, but the son of an appointed daughter is begotten by a stranger not expressly authorized; and therefore the son of the wife is more intimately connected with his adoptive father. When the appointed daughter was given in marriage, the son-in-law was nominated to raise up offspring; but the son of an appointed daughter, described by MENU, inherits as a son's son. This brief exposition may suffice.

CCXX.

MENU : á — Between a son's son and the son of *such*

a daughter, there is no difference in law; since their father and mother both sprang from the body of the same man.

β' By that male child, whom a daughter thus appointed, either by an implied intention, or a plain declaration, shall produce from an husband of an equal class, the maternal grandfather becomes in law the fire of a son's son; let him give the funeral cake, and possess the inheritance*.

γ' The son, however, of *such* a daughter, who succeeds to all the wealth of her father dying without a son, must offer two funeral cakes, one to his own father, and one to the father of his mother.

CCXXI.

SANC'HA and LIC'HITA:—Between a son, and the son of *such an appointed* daughter, there is no difference.

The son of an appointed daughter being considered as a descendant in the male line, there is no difference between a son's son and the son of *such* a daughter; for, the appointed daughter being considered as a son, her male issue is held similar to a son's son. It is hereby intimated, that, as a son's son succeeds to the heritage on failure of the son, so does the male child of an appointed daughter succeed on failure of her; and he shall take a share in right of his mother, if there be a son of another description, or if there be another appointed daughter. This text is inserted by JÍMÚTAVÁHANA and the rest under the title of Succession to the estate of one who leaves no male issue, as showing generally, that the son of a daughter shall take the estate of a maternal grandfather who leaves no son: this will be discussed in its place.

“Appointed by an implied intention;” by no express declaration

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* Between this and the following verse, the hemistich, which has been inserted at CCIX, is again cited. T.

tion that she is selected to raise up a son to her father, but thus appointed by an act of the mind unexpressed. “By a plain declaration,” declared in express words to be thus appointed. “From an husband of equal class,” mentioned to exclude a husband of inferior class, for it would be inconsistent with common sense to exclude one of superior class; and it is recorded, that the daughters of DACSHA (lord of created beings, and son of PRACHETAS, the descendant of a king named PRĪT’HU,) were married to CASYAPA, and appointed to raise up issue to their father.

CCXXII.

MENU:—In this manner DACSHA himself, lord of created beings, anciently appointed all his fifty daughters to raise up sons to him, for the sake of multiplying his race:

2. He gave ten to D’HERMA, thirteen to CASYAPA, twenty seven to SÓMA king of *Bráhmanas* and *medical plants*, after doing honour to them with an affectionate heart.

“In this manner;” in the form for appointing daughters to raise up sons to their fathers: that shall be hereafter delivered.—It should not be objected, that this DACSHA is he who sprang from the toe of BRAHMÁ. He is not recorded in the *Srī Bhāgavata*, as giving his daughters to CASYAPA, but as giving one to SIVA*. Nor should it be objected, that the daughters of DACSHA, who sprang from BRAHMÁ, are mentioned in other works as married to CASYAPA, which therefore coincides with the institutes of MENU. Since the *Bhāgavata* may serve to reconcile the apparent contradiction, it would be improper to reject its authority.

“Let him give the funeral cake, and possess the inheritance,” (CCXX β’;) ‘as a son’s son’ must be supplied. The gift of the funeral cake is mentioned under the title of Inheritance, to show that

* This DACSHA had sixteen daughters by PRASUTĪ daughter of MENU. He gave thirteen to D’HERMA, one to AGNI, one to fires collectively, and one to SIVA. See *Bhāgavata*, Book 4. The allegory in the marriages of his daughters, and in the fruit of those marriages, is particularly obvious. T.

that succession to the heritage is founded on the benefit conferred by offering the funeral cake. The consequence of this will be explained under the head of Succession to the estate of one who leaves no male issue. "Dying without a son" (CCXX γ): this is explained in the *Retnācara*, and by CULLÚCABHATTA, leaving no son by himself begotten. That is pertinent on the supposition that an appointed daughter is considered as a son. "Who succeeds to all the wealth of *his* father" (ibid); of his natural father: the legislator proceeds to mention the benefit, in right of which he shall inherit the estate. Because he offers funeral cakes both to his own father and to his maternal grandfather, therefore shall he succeed to their wealth. But if his natural father leave another son, that heir is first entitled to perform the obsequies, and possess the inheritance: hence this son of an appointed daughter is a secondary and nominal son of one who leaves no other male issue. However, the daughter's son alone shall perform the obsequies, and succeed to the estate for his maternal grandfather, who leaves no male issue by sons. Such is the exposition approved by CULLÚCABHATTA. It is reasonable that he should only inherit if there be no sons of any other description; but nothing has been expressly said by CULLÚCABHATTA on this point. The author of the *Pracāsa*, reading the first hemistich of the last verse first* (CCXX γ), expounds "father," maternal grandfather; considering the maternal grandfather as *adoptive* father of the son produced by an appointed daughter, or explaining the word "father," from the relation of the terms, as signifying the father of the appointed daughter, he affirms that the phrase, "shall inherit the whole of the estate of *her* father," is a repetition. But UDAYACARA holds, that this last hemistich is delivered as the reason of the precept: because the son of a daughter shall obtain the estate of her father, who leaves no son, therefore shall the son of an appointed daughter also obtain the estate of such an ancestor. CHANDÉSWARA fully concurs in that opinion: but his gloss, 'leaving son by himself begotten,' is liable to objection; for a daughter's son does not in general succeed to the estate if there be any adopted son, and there is consequently no such general right, on which that exposition can be grounded.

CCXXIII.

* That is, he transposes the first hemistich of MENU, chap. ix. v. 132, and last hemistich of v. 131. See translation of MENU, p. 184. T.

CCXXIII.

MENU :—Not brothers nor parents, but sons, *if living or their male issue*, are heirs to the deceased; but of him who leaves no son; *nor a wife, nor a daughter*, the father shall take the inheritance; and, *if he leave neither father nor mother*, the brothers*.

On this CULLUCABHATTA thus comments; neither uterine brothers, nor parents, but, on failure of sons begotten in lawful wedlock, the son of a wife begotten by a kinsman, and other secondary sons, are heirs to the *deceased* father: this is meant, for the right of a son begotten in lawful wedlock is deduced from another text (CCXV). But of one who leaves no son properly or improperly so called, nor a wife, nor a daughter, the father shall take the inheritance, this text is placed after describing sons of twelve kinds. In effect there is no variance.

CCXXIV.

VRĪHASPATI :—As sons, so do the daughters of men, spring from successive bodies: how then should any other human being inherit the property, while a daughter exists?

2. Married to a man of equal class, virtuous, delighting in submission, she shall inherit her father's estate, whether she be expressly appointed or not, *to raise up male issue to him*.
3. As she becomes owner of her father's wealth, even though kinsmen exist, so does her son claim the estate of his mother and maternal grandfather.

As the father sprang from the paternal grandfather, and the son from the father, so does a daughter likewise *spring from her father*,

* Partially quoted in this place: the last hemistich is cited after V. 424. T.

father, who proceeded from her grandfather; how then should any other, the brother of the deceased or the son of that brother, inherit the property, for the brother of the deceased, or other collateral, sprang from the grandfather of that daughter, but not from her father. “Married to a man of equal class;” not married to a man of inferior class, contrary to law. “Whether appointed or not;” appointed by a plain declaration or implied intention: another interpretation will be noticed under the head of Succession to the estate of one who leaves no male issue. This precept is applicable when an appointed daughter is treated like a son, as is suggested by MENU; for the precepts coincide, since VRĪHASPATI describes her as similar to a son: but if the son of an appointed daughter be considered as the adopted child of her father, he is heir in the first place. Even though kinsmen, such as brothers and the rest, do exist, her male child is capable of inheriting his mother’s property because he is her son, and his maternal grandfather’s property because he is considered as a son’s son.

CCXXV.

SANC’HA and LIC’HITA:—The daughter shall take the female property, and she alone is heir to the wealth of her mother’s son, *who leaves no male issue*.

The first part will be explained under the head of Succession to the property of one who leaves no male issue. On the latter part, the following gloss is delivered in the *Retnâcara*: by offspring is here signified the son of that daughter’s mother; if that son, born subsequently to her appointment, die, leaving no male issue, that sister alone shall inherit on failure of the mother and father.

The reason is, that she is similar to a brother. But that, it may be said, is liable to objection; for SANC’HA and LIC’HITA consider the son of an appointed daughter, not the appointed daughter *herself*, as the adopted son of her father: how then can she be similar to an uterine brother? The answer is, any son, not expressly mentioned by any one legislator, must be understood by implication. Else he would have propounded the law imperfectly, or another legislator would have asserted more than the law. Accordingly MENU has not expressly noticed partition
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by a father; but he has said, "the father shall never make an unequal division among them" (XXIX). In like manner it must be inferred, that SANC'HA and LIC'HITA also acknowledge the appointed daughter as an adoptive son, by admitting a different design *in making the appointment*. Then if there be both an appointed daughter and the son of an appointed daughter, which of them shall possess the inheritance or perform the obsequies? The appointed daughter alone, for she was begotten by the man himself on his lawful wife. It should not be objected, that her claim is weaker by reason of her sex. Upon the authority of the law she is truly considered as a son, and her sex is nothing to the purpose. Nor should it be argued, that the son has a superior claim, because he gives the two funeral cakes which must be offered to the late proprietor in the double set of oblations. Were it so, she would have an inferior claim to that of the son given, and to that of any other daughter's son; which is not affirmed by any legislator. This brief statement of the law may suffice.

ART. II.—*On the Appointment of a Daughter to raise up a Son for her Father.*

"He who has no son may appoint his daughter in this manner, to raise up a son for him," (CCXII). "Who has no son," is not mentioned as a requisite condition, but is merely descriptive; for the father of a son has no *such cogent* reason for appointing his daughter to raise up issue for him. *Still however he may so appoint his daughter*: accordingly it is well known, that MENU, son of the Self-existent, and himself the propounder of this very text, appointed his daughter to raise up issue for him, although he had sons. That is mentioned in the *Sri Bhāgavata*, "O king!" (see the verse cited from the *Bhāgavata* in the preceding article); the speaker thus addresses the king PERICSHIT. On reading the word 'king' in the first case, it relates to the agent in the sentence, namely MENU, sprung from the Self-existent; for he was then lord of the earth. He gave his daughter ACÚTI to RUCHI, son of BRAHMÁ, lord of created beings, "although

“ although she had brothers ;” for she had two brothers, PRIYAV-RATA, and UTTÁNAPÁDA, both kings. “ SATARÚPÁ” was wife of MENU :

Or the term “ who has no son ” (CCXII) may signify, who is absolutely destitute of male issue. “ For the purpose of performing my obsequies ” (CCXII) ; the term (*śwād'há*) signifies obsequies, for the *Vēda* directs that word to be used with rice offered to progenitors : the meaning therefore is, for the purpose of performing the *śrāddha*. Is not this appointment useless, since all sons of daughters perform obsequies for their maternal grandfathers ? The term must be here understood in the sense of principal *śrāddha* ; for it would be otherwise unmeaning. Or the word “ mine ” may signify my race ; and “ male child ” may signify descendant, such as a son or remoter descendant by males : “ from her ” bears a causal sense. Consequently the meaning is, that descendant who shall proceed from her shall be mine, sustaining my lineage, and performing obsequies. It follows, that the daughter, being the root whence that child springs, is included in her father's lineage ; and a son's son is a descendant, as well as a son. By the effect of such an appointment, the daughter belongs, as an adopted son, to her father's lineage : any other daughter passes into the family of her husband, but this daughter retains her claim to the family of her father.

Upon the reason above mentioned, the expression “ who has no brother,” in the text of VASISHT'HA (CCXVI) is merely descriptive ; for it is not requisite to her filiation. Common sense shows, that she may be appointed to raise up a son, without being decked with ornaments ; for that is not requisite to filiation. The son of the appointed daughter being alone mentioned as an *adopted* son, does it not follow, that, according to this opinion, the appointed daughter is not considered as a son ? No ; for that would contradict the precept, “ an appointed daughter is equal to the son of the body ” (CCIII). The second word, “ son,” therefore signifies descendant ; and a son's son is a descendant, as well as a son. Or by this form of appointment the son of the appointed daughter solely becomes a son : that the appointed daughter *herself* may become a son, another form of appointment must be used. Both must be considered as intended by VASISHT'HA ; else the precept would be imperfect : his not having expressly men-

mentioned both forms of appointment, is nothing to the purpose; for, a son given not being mentioned in the text of the *Brahma purāna* (CCXVII), shall he not obtain the same share with others if he possess similar good qualities? *The declaration may run* in this form: "the son who shall be born from her shall be mine;" or other words may be used to the same effect.

GÓTAMA:—He who has no male issue, may appoint his daughter to raise up a son for him, making an oblation to fire, and performing the sacrifice called *prājāpati* (or *prājāpatya*), and declaring, "her offspring shall belong to me:" but, according to some, she may be simply appointed by an implied intention.

"Who has no male issue;" that is, who has no son: the meaning has been already explained. "Making an oblation to fire, and performing the sacrifice called *prājāpatya*;" or performing a single sacrifice with the legal fire, according to the form ordained in the particular *śāc'ha* of the *Vēda* followed by the family; or, if no perpetual fire be maintained, worshipping in the common form, *he may thus appoint his daughter*. Such is the remark of HERIHERA. Consequently two sacrifices with two fires are chiefly recommended; on failure of that, a single sacrifice with the legal fire: and this concerns such as keep a sacred hearth; but one who maintains not a perpetual fire, may worship in a common mode. "Declaring," signifies proclaiming. "According to some, she may be simply appointed by an implied intention." By saying "according to some," disapprobation is intimated; else the legislator would not have said "declaring, &c." By disapprobation, inferiority is intimated. It is consequently suggested, that a daughter so appointed by an implied intention, is inferior to one appointed by a plain declaration. For this very reason GÓTAMA has stated the son of an appointed daughter as not having precedence above the son of an unmarried girl and the rest (CLXXXIV). But others have expressly mentioned the son of a daughter appointed by a plain declaration, and have assigned him precedence above the son of an unmarried girl and the

the rest. According to the degree of good or bad qualities, he must be deemed superior or inferior to the son of a wife begotten by a kinsman. Thus some expound the text. Consequently, an implied intention, and an express declaration, (after performing the sacrifice with fire, and that called *prājāpatya*, or after simple worship,) are the forms of appointing a daughter to raise up a son for her father.

VRĪHASPATI:—GÓTAMA has said, that a daughter is appointed after making an oblation to fire, and performing the sacrifice called *prājāpati* (or *prājāpatya*); but others hold, that a girl who was supposed to be a son whilst borne in her mother's womb, is an appointed daughter.

“Supposed;” concerning whom it was determined that she shall be an appointed daughter. *The Retnācara.*

Some explain the text, she whom her father supposed to be a son, whilst she was borne in the womb of his wife; in other words, she, of whom it was thought, “this foetus will be a male child,” is an appointed daughter, and equal to a son. Though she be in fact a female, her father does not choose to consider her as such, but attributes to her the rank of a son, according to his wishes. If her father intend, or declare, “her descendants shall be mine, she is called by VRĪHASPATI an appointed daughter: she is mentioned by VASISHT'HA (CCIII) as equal to the son of the body: and such an appointed daughter is intended by MENU. But a daughter who is appointed by a plain declaration after her birth, is meant by DEVALA and the rest; and her son becomes the adopted child of his maternal grandfather. Different forms are propounded by NĀREDA to place the appointed daughter in the relation of a son, and to place the son of such a daughter in that relation.

Others hold, that a plain declaration, preceded by a sacrifice with fire, and by that called *prājāpatya*, is one form, which GÓTAMA himself approves: the same form is mentioned by VRĪHASPATI in the first half of his text. The mere intention is a second form. By the word “mere,” an express declaration and
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the sacrifice are excepted ; and that intention is formed as early as the time when the mother's pregnancy becomes known : this second form is not much approved by GÓTAMA ; and this same form is mentioned by VRĪHASPATI in the second half of his text.

VISHNU :—A damsel given in marriage by her father *with a declaration in this form*, “the son who shall be born of her shall be my son,” is an appointed daughter : and, even though not given according to the form for appointing a daughter to raise up a son for her father, she is considered as such, if she have no brother, *and were appointed by an implied intention*.

“With a declaration” must be supplied in the text. Even though not appointed in that form, *she is considered as an appointed daughter*. On this some argue from the coincidence of the phrase with the text, “let a man espouse a young girl who has a brother, &c.” that every son of a daughter who has no brother is the son of an appointed daughter, and first in dignity ; the son of an appointed daughter, as described by GÓTAMA, is inferior to him. That is wrong ; for doubt is mentioned in the text of SANC’HA and LIC’HITA (CCIV) as the reason for not marrying a damsel who has no brother ; but if there be no doubt, such a marriage may be contracted : it follows, that she does not become an appointed daughter. Hence the expression, “even though not given in the form for appointing a daughter to raise up a son for her father,” must be explained, even though not given with an express declaration ; but “appointed by an implied intention” must be supplied in the text, because it has the same import with that of GÓTAMA. “Who has no brother,” is merely descriptive, suggesting the appointment by an implied intention : in general, such an intention can only be entertained by one who has no son.

The *Brahme purána* :—The daughter of one who has no male issue, being appointed a son by an act of the mind, or any where appointed in the presence

sence of the king, of sacrificial fire, and of kinsmen,

2. Or *supposed to be a son* so long as she was in her mother's womb, or given after the death of her father to a bridegroom with a nuptial present for that express purpose, must be considered as an appointed daughter.
3. Such a daughter shall take an equal share of the paternal inheritance.

"Appointed a son by an act of the mind," is one mode. The appointment mentioned by MENU, and made before the king, before the sacrificial fire, and before kinsmen, *in this form*, "she is an adoptive son, her progeny shall be mine," is a second mode, preferable to the former: in the presence of the king, her father must declare, "she is appointed to be my son;" he must make the same declaration before the sacrificial fire (that is, while performing a sacrifice), and with holy texts; he must also make the same declaration in the presence of kinsmen. "Supposed to be a son so long as she was in her mother's womb," is a third mode. Being given to a bridegroom with a nuptial present, at the same time that her appointment is proclaimed, a daughter, even though given by another person after the death of her father, is legally appointed: consequently a plain declaration to the bridegroom, preceded by a nuptial present, is a fourth mode. According to this opinion, the difference is evidently founded on the different form of appointment to place the appointed daughter or her child in the relation of an adopted son. The appointment by an act of the mind is the same with the second form, mentioned by GÓTAMA. His first form is placed second in this text. Hence, say these lawyers, the texts of GÓTAMA and VRĪHASPATI do not bear the same import.

But others affirm, that an appointed daughter, who was supposed to be a male child so long as she was in her mother's womb, is considered as a son. They expound the text as follows: a daughter, mentally treated as a son so long as she was in her mother's womb, or appointed in the presence of the king, of sacrificial fire, and of kinsmen, and given by her guardian, after the

death of her father, to a bridegroom, with a nuptial present delivered, or not delivered but promised, is an appointed daughter. The first particle “*vá*” must bear the affirmative sense; the second, a disjunctive sense; and the third must signify ‘also:’ for it is explained by AMERA, as comparative, disjunctive, affirmative, and connective*. Consequently that daughter, who was supposed to be a male child from the time when pregnancy became known, or who is proclaimed *to be an appointed daughter*, before the king, before sacrificial fire, and before kinsmen, and who is given to a bridegroom, by whom a nuptial present has been accepted, or by whom it has been generously refused, is an appointed daughter. She who passed through this whole ceremony, shall have an equal share with the son of the body; but if there be any deviation in the essential points of this formality, she is reduced accordingly to a lower rank. It must be understood, that she is previously proclaimed ‘a daughter appointed to be a son.’ The allotment of an equal share, as here mentioned, is admitted by MISRA, by the author of the *Dipacalica*, and the rest. But, according to others, the meaning is, that she shall take a full share, if there be no son of the body. By acceptance of a nuptial present, or by generous acceptance of the damsel without such a present, the natural father *of her child* has relinquished his claim to the son *born of her*. This brief explanation may suffice.

But it should be remarked in this place, that the appointed daughter is considered as a son, that she may take the inheritance; her child is considered as an adoptive son, that he may offer the double and single sets of oblations to ancestors. This is in every respect accurate. Let it not be objected, that there is no ground for this selection in an ambiguous case. A woman is incapable of offering the double set of oblations. There is no difficulty on this exposition.

SECT. IV.—*On the Son of a Wife.*

He is third in rank according to YÁJNYAWALCYA; for, after mentioning the son of an appointed daughter as second in rank, he adds,

* AMERA is here misquoted: he explains *vá* as comparative and disjunctive, signifying as and or. Some other work has been erroneously quoted in his name. T.

adds, "the son of a wife is one begotten on an appointed wife
 "by a kinsman sprung from the same original stock with her
 "husband, or by another person duly authorized" (CC). "Sprung
 from the same original stock" is explained in the *Retnâcara*, sprung
 from the same family. "By another person;" by a man of su-
 perior class. A man of equal class, but of another family, is
 thus excluded; hence no son of a wife can be raised to a *Brâh-*
mana, unless by a man of the same family: if this be objected,
 the answer is, the consequence is admissible. It is accordingly
 said in the *Dîpacalîcâ*, a son begotten on the appointed wife of
 another who has no male issue, by a kinsman within the relation
 of the funeral cake, or by a man of superior class sprinkled with
 clarified butter, and observing the other forms consequent to the
 appointment, is the son of a wife.

CCXXVI.

MENU:—Even the son of a wife *duly authorized*,
 not begotten according to the law *already pro-*
pounded, is unworthy of the paternal estate, for he
 was procreated by an outcast.

"Not begotten according to the law *already propounded*;" be-
 gotten in breach of the rule which appoints either a kinsman
 related by the funeral cake, or a man of superior class. "He is
 unworthy of the paternal estate;" consequently he does not become
 in law the son of a wife. "For he was procreated by an outcast;"
 the degradation of his natural father is hereby intimated.

CCXXVII.

MENU:—Either brother, appointed for this purpose,
 who deviates from the strict rule, and acts from
 carnal desire, shall be degraded, as having defiled
 the bed of his daughter-in-law, or of his father.

"The strict rule;" that under which a kinsman or a man of
 higher class raises up male issue. Does it not appear, from the
 expression

expression “as having defiled the bed of his daughter-in-law or of his father,” that either brother above mentioned, and no other person, does approach the wife: how then can the strict rule be violated, since both are kinsmen? and why is it said they shall be degraded? A man of equal class being mentioned in the text of VISHNU (CLXXXV), one of inferior class is excepted: consequently, if either brother, being inferior in class, though related by the funeral cake, approach the wife, he is degraded. But CULLÚCABHATTA expounds “not begotten according to the law,” begotten without observing the forms prescribed, such as being sprinkled with clarified butter and so forth. “Who deviates from the rule,” he considers as bearing the same meaning. In this mode, the expression “appointed for the purpose,” may be fitly taken in a literal sense.

CCXXVIII.

MENU:—Sprinkled with clarified butter, silent, in the night, let the kinsman thus appointed beget one son, but a second by no means, on the widow or childless wife.

“Thus appointed;” the form of appointment is, “beget a son on this woman;” or, addressed to the woman, “obtain from that man the procreation of a son.” According to this opinion, it must be affirmed that the principal object fails by the want of some formality, such as being sprinkled with clarified butter and so forth. The principal object being thus unattained, it must be examined whether the begetter be degraded, or the son begotten be incapable of inheriting. The following text shews, that the son of a wife should be obtained through a kinsman:

CCXXIX.

MENU:—On failure of issue by the husband, *if he be of the servile class*, the desired offspring may be procreated, either by his brother or some other *śapinda*, on the wife, who has been duly authorized.

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The brother of her husband is named in the first instance; on failure of him, another kinsman related by the funeral cake. The desired offspring may be obtained, by a wife duly authorized by her spiritual parents, from a brother of her husband, or from another *śapinda*. "Desired offspring" being mentioned, if a child unfit for the duties *incumbent on a son* be produced, it is permitted to repeat the intercourse for the purpose of obtaining such a son as is to be desired, namely, one capable of his duties. Such is the interpretation of CULLÚCABHATTA. Consequently the term "one," in the expression "beget one son," must signify one male child fit for the duties incumbent on him.

The third twice-married woman, mentioned under the title of Loans and Payment*, is different from this woman: however, she may be considered as a twice-married woman of that description; for the word "given," in the text alluded to (Book IV, v. CLVIII 4), may signify 'entrusted for the procreation of a son.' This sense must be deduced from reasoning: since she is not a woman wilfully libidinous, therefore, being one who had a different husband before, she must fall within the description of a twice-married woman.

"The second is the son of a wife begotten by a man of equal class on a wife duly appointed" (CLXXXV); a man of equal class here denotes one not inferior in class. Accordingly the procreation of a son by the holy VASISHT'HA, for SAUDASA a king of the solar race, which is familiarly known from the *Mahābhārata* and other works, is vindicated. Alluding to this, the author of the *Dīpācalicā* has said, 'or by a man of superior class.'

VISHNU has allotted the second place to the son of a wife, on the supposition of his superior good qualities, as has been already explained. The third place is allotted to the son of an appointed daughter; for that is shown by the order delivered in the *Retnācara*, where it is said, 'after premising the son of the body, the son of a wife, of an appointed daughter, of a twice-married woman, or of a young woman unmarried, the son of concealed birth, the son of a pregnant bride, the son given, bought, self-given, or rejected, and the son any-how *irregularly* produced.'

CCXXX.

VASISHT'HA, after mentioning the son of the body:

* I have inserted the text in the fourth book. It is cited in both places. T.

—On failure of him, the second shall inherit, namely the son of a wife duly authorized.

The text must be supplied, “begotten on a wife duly authorized.” “On failure of him,” signifies, on failure of one begotten in lawful wedlock. Consequently, on failure of sons begotten in lawful wedlock, the son of a wife is competent to perform the *śrāddha*, and shall take a full share. Such is the opinion of VASISHT’HA : and that is accurate.

CCXXXI.

MENU:—He who was begotten, according to law, on the wife of a man degraded, or impotent, or disordered, or *deceased*, after due authority given to her, is called the lawful son of the wife.

The term used in the text (*talpa*) is explained by AMERA, “bed, brick-house, wife.” “On the wife of a man degraded ;” if an outcast himself begot a son, he could not inherit, because he likewise would be degraded : but, like an impotent man, an outcast may authorize his wife *to conceive by another*, provided she have not been enjoyed by the degraded man ; else, since she would be degraded, her son also would be an outcast. The particle “or” is connective, and refers to the word “deceased,” *which is understood* : consequently, he who was begotten on the wife of a man deceased, after due authority given by her husband *in his lifetime*, or by spiritual parents *after his death*, is also called the lawful son of the wife. “According to law ;” sprinkled with clarified butter and so forth. The Retnācara.

CCXXXII.

MENU:—He who keeps the *fixed and moveable* estate of his *deceased* brother, maintains the widow, and raises up a son to that brother, must give to that son, *at the age of fifteen*, the whole of his brother’s *divided* property.

A share

A share allotted to brother's wives, although they have no sons, is mentioned by VASISHT'HA (CXVII); the brother, by whom that allotted share is kept, and by whom the widow is maintained, and who begets a son on that widow, must deliver the property to him: but if no son shall be born, all the brothers shall take it as joint property. This will be explained under the title of Succession to the estate of one who leaves no male issue.

If the wife of the eldest brother be so situated, shall, or shall not, the portion of an eldest son be allotted? The answer is, since the share is set apart, that it may be ultimately received by the nephew, the precept delivered in a text formerly cited (LXXVI 1) must be here adduced. But if authority be given in this form, "raise up a son by any suitable man," then, since the son may possibly be procreated by another man, a share should be set apart with the portion of an eldest child; and if that share be kept by any one younger brother, and the son be procreated by him, still he shall take an allotment, which includes the portion of an eldest child, because it had already become his. Thus some lawyers solve the question. But that is wrong; for, one who is yet unborn can have no vested title; and, during the interval, that wealth is similar to unowned property. The wife's son, already born, cannot take the portion of an eldest child; he shall therefore only receive an equal share. But CULLÚCABHATTA considers this text as relating to divided brethren: consequently, when a separated brother dies, his property should be committed, by his widow, who is incapable of guarding it, to any one brother of her husband: procreating a son on that widow, he must give the whole of the property to that child.

CCXXXIII.

MENU:—Should a wife, even though legally authorized, produce a son by the brother, or any other *sapinda*, of her husband, that son, if begotten with *amorous embraces and tokens of* impure desire, the Sages proclaim base-born and incapable of inheriting.

On this CULLÚCABHATTA delivers the following gloss: if a wife,

wife, even though legally authorized by spiritual parents, produce a son by the brother or other near kinsman of her husband, or by a man of superior class, who observes the prescribed form of being sprinkled with clarified butter and so forth, (for the circumstances mentioned are merely illustrative,) but acts from the impulse of unchaste desire, that son is incapable of inheriting, and is base born ; for he is not competent to perform obsequies and take the heritage : in fact he is begotten by an adulterer. But such a son, begotten without *amorous embraces and tokens of* impure desire, is capable of inheriting. That is declared by NÁREDA ; “averting his face from her’s, and shunning the contact of limb with limb, for the sake of offspring, that the family may be perpetuated, and not through amorous desire*.” “That the family may be perpetuated ;” in that family wherein that future son will continue *and perpetuate the race*, or wherein that woman will remain. The meaning is this : one fruit of a wife is connubial joy, another is male issue, as declared in the *Cálicá purána*, “a wife affords connubial joy and male issue :” since progeny is of course suggested by the single term of connubial joy, male issue is again expressly mentioned by way of allusion to the son legally begotten on the wife *of another* and so forth, and for the purpose of showing that the act must be free from amorous desire : the brother of a husband, and others acting as substitutes, must not take that fruit which consists in connubial pleasure, for the law does not authorize it ; they must only seek that fruit which consists in male offspring. Connubial pleasure is a certain mutual relation of husband and wife ; it is excited by the contact of mouth and limbs ; hence, since that particular state which constitutes connubial pleasure must be avoided, it follows that the contact of mouth and limbs must be shunned. That particular state *unavoided* becomes the cause of degradation ; hence a son should be procreated in a legal mode ; a man of inferior class and so forth must in this case be shunned, as a damsel related within the degree of a *śapinda* and the like is avoided in contracting a marriage. Such is the law.

But some insert the privative *A*, and explain the text, “should a wife, not legally authorized by spiritual parents, produce a son by the brother, or any other *śapinda*, of her husband, that son is begotten

* Book IV. v. CXLVIII.

begotten through impure desire, &c." Their exposition is wrong, for the text would be a vain repetition of the following :

CCXXXIV.

MENU:—The son of a wife not authorized to have issue by another, and the son begotten by the brother of the husband, on a wife who has a son then living, are both unworthy of the heritage; one being the child of an adulterer, and the other produced through mere lust.

Both must be considered as sons of adulterers, and produced through mere lust*. Others, following the gloss of CULLÚ-CABHATTA on a text above cited (CCXXVI), consider the particle (*vá*) as connective, and interpret the text (CCXXXIII), should a wife, even though duly authorized, produce a son by any other than a brother or *sapinda* of her husband, that son is begotten through impure desire. To conclude, the Sage proceeds to mention a particular rule concerning the son of a wife :

CCXXXV.

MENU:—But the son *legally* begotten on a wife authorized for the purpose *before mentioned*, may inherit *in all respects, if he be virtuous and learned*, as a son begotten by the husband; since *in that case* the seed and the produce belong of right to the owner of the field.

"On her (*tatra*);" on such a wife as is suggested by the law, one of inferior class to the procreator, or related to him within the degree of a *sapinda*, and to whom he shows due respect, being sprinkled with clarified butter and so forth. Or the term (*tatra*) may be taken in another sense of the seventh case, as in the example

* I think it unnecessary to alter the translation of this text for the purpose of reconciling it with the commentary. See MENU, Chap. ix, V. 143. T.

ample 'if there be wealth there is ease;' and the sense is, if the circumstances required by the law do exist. A son so begotten may inherit *the property*, (for that must be supplied in the text,) like a son of the body begotten by the husband on his own wife. Whose property shall he inherit; the husband's, or the natural father's? In reply to this question the Sage adds, "since in that case the seed and the produce belong of right to the owner of the field." The proprietor of the field becomes owner of the seed, because he begged it: hence the produce belongs to him. Why does not one irregularly begotten on a wife duly authorized, belong to the owner of the field? Therefore does the Sage add, "of right." He is lawfully begotten: but one irregularly procreated is not lawful issue; hence, though connected with the owner of the field, he is not considered as his son, for he is incapable of filial duties: and MENU had properly said in a former text, "the seed belongs to the landowner."

CCXXXVI.

MENU:—Whatever man owns a field, if seed conveyed into it by water or wind should germinate, that seed belongs to the landowner: the mere sower takes not the fruit.

As seed, such as corn and the like, being brought by a stream of water or current of wind, and falling on the field of another, produces a crop belonging to him, so seed, or seminal juices, brought by entreaty or the like, and falling on the field, that is, the wife of another, raises a son belonging solely to that other.

CCXXXVII.

BAUDHAYANA:—The son begotten by another on the wife of a man deceased, impotent, or distempered, after due authority given for that purpose, is the lawful son of the wife:

2. He is considered as the son of two fathers, claims

claims both families, and may perform the obsequies and take the heritage of both fathers.

The construction is, 'the son begotten by another,' namely, by a brother of the husband and the like. In the compound term, which signifies son of two fathers (*dwipitā*), the regular suffix is omitted, not being indispensably requisite after compound words. He claims descent from the original stock of both. The word "obsequies" signifies rites performed in honour of ancestors.

The *Retnācara*.

CCXXXVIII.

YĀJNYAWALCYA:—The son begotten by one who has no male issue, on the wife of another, after due authority given to him, is considered as heir to both, and shall present the funeral cake to both fathers.

CCXXXIX.

NĀREDA:—The produce of seed sown in the field of another, with the owner's permission, is considered as belonging both to the owner of the seed and to the proprietor of the soil.

CCXL.

SANC'HA and LIC'HITA:—The son of ANGIRAS has declared, that the offspring belongs to him who married the mother; but US'ANAS holds, that the produce of seed which is sown with the consent both of the owner of the seed and of the owner of the field, is shared by both.

Two opinions are delivered by SANC'HA and LIC'HITA, as espoused by two different legislators. The religious ceremony relative to the mother consists in taking her hand in marriage;

to

to him who has done so, namely to the owner of the field, belongs the offspring procreated by another. So A'NGIRASA* has said. According to his opinion, this offspring does not belong to the owner of the field. Whatever seed is sown, its produce, or the offspring, which is similar to produce, is shared by both, that is, belongs both to the owner of the seed and to the owner of the field. So says UŚANAS, preceptor of the *Daityas*, and regent of the planet Venus.

CCXLI.

HÁRÍTA :—The son of the wife, *begotten by another during the life of her husband*, some consider as son of her husband alone, because she was not independent; but one begotten after his death, they consider as the issue of two fathers, because the seed was not sown by her husband: for soil bears not fruit without seed, nor does seed germinate without soil. They consider him as the offspring of both, because both appear to contribute to his birth: among these he is originally the son of the procreator; let him offer two funeral cakes in the sacrifice to progenitors, and celebrate both fathers on each cake: his son shall name both with the second cake; his son's son with the third; and those *remoter descendants*, down to the seventh in descent, who wipe off the rice with roots of *cus'a*, shall make this offering for the sake of both ancestors in each of three degrees.

The *Retnācara* furnishes the following comment on this text: the husband being alive, they consider the son of the wife, though begotten by another, as son of the husband alone. Why? Because the wife is not independent; (for so must the text be supplied.) After the death of the father, for whom a son is raised, though she remain

* VRI'HASPATI, son of ANGIRAS.

remain equally dependent (CCCCCLXXVII 2), still they consider him as a son of two fathers. Why? Because *the husband* did not sow the seed in the field. Even in the case of a living husband, indeed, he is not *strictly* the sower of the seed. The mutual connexion of *certain* events is the cause of offspring: therefore does the Sage add, "*for* soil bears not fruit without seed, &c." both are *severally* considered as owner of the seed and owner of the soil. The term used in the text signifies sacrifice to progenitors. "Let him celebrate both fathers on one cake:" let him repeat both names with each oblation; let him mention both fathers with each cake, and so forth, according to the oblation presented. "His son shall name both with the second cake;" that is, his son shall offer the second ball of rice *for both*. Three, who wipe off the rice with roots of *cusa*, shall celebrate both ancestors. The term used in this gloss ("as son of the husband alone,") and which literally signifies agent (*cartri*), means husband; mentioned to obviate the doubt whether this son does not belong to both, since he is born of the wife, and begotten by the brother of her husband. This is true, because she is not independent: the wife belongs to the husband alone; and therefore offspring, obtained through her, belongs exclusively to him.

Is it not superfluous to distinguish whether the husband be alive or dead? for a woman is bound by the obligation of dependence on her husband, even after his decease; else a widow might connect herself with any man she pleased, since no one could oppose it. It should not be objected, that a widow is restrained from such conduct, not through her dependent condition, but by the dread of vice: else (*if women were not restrained by a sense of duty*), what should prevent an unmarried girl connecting herself with a stranger? *The cases are not parallel*; for, in the instance of an unmarried damsel, there is no person who can authorize *her incontinence*. The seeming difficulty is likewise reconciled upon this principle.

The text is read *na dwyāmusbyāyan' am*, not the issue of two fathers, instead of *dwya musbyāyan' am*, issue of two fathers. He by whom the seed is sown, is in so far her lord; for she has no *real* husband. Consequently, after the death of her husband, since there can be no compact that the child shall be son of both, the offspring does not belong to both. But, during his life, it is possible

possible that such an agreement should be made. With a view to this, the legislator says, "during the life of her husband." The negative must therefore have been inserted through negligence. According to the *Retnâcara*, "some" is connected with "consider." The son, (that is, the son of the wife's son,) when offering the second ball of rice to his paternal grandfather, shall celebrate both ancestors with each ball. In offering the third cake to the paternal great-grandfather, the son's son (that is the grandson of the wife's son) shall celebrate both ancestors.

Rigid interpreters consider the expression "during the life of her husband" as merely illustrative. They read the text *Yat dvyâmusbyâyâñ am*, and explain it, that son of the wife who is thus produced, some consider as son of two fathers. Why? Because *the husband is not independent*; (for so, *they think*, the text must be supplied.) The reason of his wanting independence is subjoined; because the seed was not sown by him. In answer to the question, if the seed be more efficacious *than the soil*, must not the produce belong to the owner of the seed alone, not to the owner of the soil? but if the soil preponderate, must not the produce belong to the owner of the soil alone, not to the owner of the seed? the Sage subjoins the argument on which the produce may be held to belong to both; "for soil bears not fruit without seed, "&c." The construction *of the sentence* refers the word "consider" to the word "some." "Procreator" alludes to the husband obtaining offspring by means of his wife considered as his field; and to the natural father obtaining issue by means of seed. "Celebrate both fathers on one cake," is a secondary case. The term used in the text (*trîn âchacshâna*) signifies for the sake of *both ancestors in each of three degrees*. NÂREDA and CÂTYÂYANA have noticed both cases. Their text has been already cited (CCXXXIX repeated at v. CCXLV.)

CCXLII.

NÂREDA:—The son of two fathers shall separately offer the funeral cake and water to both, and shall take half a share out of the estate of his natural father, and another half share out of the estate of his mother's husband.

From

From the word "separately," it appears that two funeral cakes shall be offered to two fathers. The order in which they should be offered, not being mentioned, is optional. It is observed in the *Retnâcara*, that this relates to the case where the natural father has a son begotten in lawful wedlock, and the husband of the mother also has by some means obtained male issue by himself begotten. But a son of two fathers shall take the whole property of both fathers, if they leave no other sons (CCXXXVII). This is illustrated by the following example:

CCXLIII.

Funeral cakes must be offered to both fathers, and both names be proclaimed with each cake; three balls of rice shall be offered to six persons; he who does so, errs not.

He commits no offence.

The *Retnâcara*.

The investiture and other ceremonies must only be performed by the husband of his mother; for he is claimed by him as a son. This child derives a family name from the primitive stock of both fathers, for BAUD'HAYANA says he claims both families (CCXXXVII). In the triple set of oblations* to be offered by him, there shall be two paternal lines, say these rigid interpreters; for it is similar to the double set.

An apparent contradiction here occurs between the texts of BAUD'HAYANA and others, and those of MENU and the rest. It is thus reconciled by CHANDÉSWARA: if the husband's brother, or other person appointed to raise up a son to the husband, have male issue, then the son of the wife belongs to the husband alone, not to the natural father; but if he procreate the son, stipulating, by special compact, that "the child shall in this world equally belong to both of us," that child shall be son of both. MENU himself makes this evident.

CCXLIV.

* *Nândimuc'ha*; a *s'râddha* on joyous occasions, in which nine balls of rice are offered to the father, paternal grandfather and great-grandfather, to the maternal grandfather, great-grandfather, and great-great-grandfather, and to the mother, paternal grandmother, and paternal great-grandmother. T.

CCXLIV.

MENU:—But the owners of the seed and of the soil may be considered in this world as joint owners of the crop, which they agree, by special compact, in consideration of the seed, to divide between them.

“By special compact;” by an agreement in this form, “the crop which shall be produced shall belong to both of us.” **AMERA** states the term (*abhyupagama*) as synonymous with compact or agreement.

CCXLV.

CÁTYÁYANA:—The produce of seed sown in the field of another, with the owner's permission, is considered as belonging both to the owner of the seed and to the owner of the soil.

VRĪHASPATI (CCII), mentioning with scorn the son of a wife and the rest, because the mother is unfaithful, alludes to the son who is generated by a wife and brother proceeding with amorous blandishment, in opposition to the conduct prescribed. The son self-given is included by him in the description of sons rejected, or of those *who are made by adoption*.

CCXLVI.

VRĪHASPATI:—But other sons, namely the son of the wife and the rest, shall respectively share a fifth, a sixth, and a seventh part.

“The son of the wife and the rest,” namely the son of the wife, the son of a young woman unmarried, and the son of a twice-married woman, shall respectively share, in the order in which they are mentioned, a fifth, a sixth, and a seventh part.

The *Retnâcara*.

HÁRITA directs, that an eighteenth part shall be given to the son

son of a wife begotten by a kinsman (CCXIX); the *Brahme purāna* allots a third part to him (CCXVII); and SANC'HA and LIC'HITA direct another distribution.

CCXLVII.

SANC'HA and LIC'HITA:—Three shares shall be allotted to the son of a wife begotten by a kinsman, and to the son of an appointed daughter; and one to each of the rest*.

The form of distribution must be understood in the mode already explained *in the preceding section*. If *his birth and conduct* be irreproachable, it is agreed by all that he is heir to his *adoptive* father and to kinsmen. But the son of a wife, begotten by a kinsman without due authority, shall only inherit the estate of his natural father (CCXLVIII). Such a son is the same with the twelfth son described by VISHNU (CLXXXV).

CCXLVIII.

If a son begotten in lawful wedlock, and a son of the wife begotten by a kinsman, contend for the same heritage, let each take†, exclusively of the other, his own father's estate.

It should be remembered in this place, that if the issue of one who has conducted himself in strict conformity with the law, happen to be a female, she shall belong solely to her natural or to her adoptive father, or jointly to both of them, according to the agreement *they have made together*; as is suggested by the reason of the law. This brief exposition may suffice.

VOL. III.

P

SECT.

* The last words are here subjoined to complete the text, as I find it cited in another place. T.

† The last hemistich is word for word the same with a text of MENU, Chap. IX. v. 191; but the first hemistich differs. T.

SECT. V.—*On the Son of concealed Birth.*

He is fourth in rank according to YÁJNYAWALCYA ; for, immediately after describing the son of the wife as third in rank, he proceeds to mention the son of concealed birth.

CCXLIX.

YÁJNYAWALCYA :—A male child, secretly brought forth *by a married woman* in the mansion of her lord, is considered as a son of concealed birth.

The purpose is to show that, on failure of other male issue, including the son of the wife *by a kinsman*, the son of concealed birth shall take a full share, although there be a son of an unmarried girl, a son given, or the like ; and the rest shall take the portions allotted to them by HÁRITA and others (CCXIX). “ Secretly ;” so that it is not known whose child he is.

CCL.

MENU :—In whose mansion soever a male child shall be brought forth *by a married woman whose husband has long been absent*, if the real father cannot be discovered, *but if it be probable that he was of an equal class*, that child belongs to the lord of the *unfaithful* wife, and is called a son of concealed birth in his mansion.

If it be judged from any circumstances that he was not begotten by a man of inferior class, and if the true father be unsuspected, he is called a son of concealed birth, and belongs to the same class with his mother, and to the same family with her husband, and perpetuates his race. Such is the exposition approved in the *Retnâcara*. It being mentioned as a reason why he belongs to the same class with his mother, that the true father is unsuspected,

it is thereby intimated, as the opinion adopted in the *Retnâcara*, that the legitimate son of a priest, by a *Cshatriyâ* wife, belongs to the sacerdotal tribe. This mode of reconciling the apparent contradiction between the texts of YÁJNYAWALCYA and that of another legislator is liable to objection: the first, after premising that the son of a priest by a woman of the military class is called *Múrdhábhishta**, and so forth, adds, “from a merchant, by a woman of the servile class, sprung the *Carana*; this rule is ordained in regard to married women:” the other expresses, “men of mixed classes perform rites during seasons of purity and impurity, in the same form which is practised by men of their mother’s tribe.” But CULLÚCABHATTA mentions, as the son of a married woman, the *Pâraśava*, another name of the *Nishâda*, or son of a *Brâhmana* by a *Sûdrâ*; but has said nothing expressly on this point. He shows, however, that, if the father be known to be equal in class, but the particular person be unascertained, the child is called a son of concealed birth. Equal in class here signifies not inferior in class; for that agrees with the *Retnâcara*, and is consistent with reason.

If the natural father be known, and if authority had been duly given to him, and he violated no part of the form prescribed, such as being sprinkled with clarified butter and so forth, the child is called the son of the wife; but not unless authority had been given: in this last case he belongs to the procreator alone, as already mentioned. Is not good argument wanting to show why he should be called the son of concealed birth when the real father is unknown, but not so called when the procreator is ascertained? It should not be answered, if a known person procreate a son without authority given for that purpose, the child belongs to him alone, not to this *husband*. That is denied by MENU (CCXXXVI). If this *difficulty* be proposed, *the answer is*, legislators are not liable to such reproaches. In fact, this and other texts (CCXXXVI, &c.) allude only to the son of concealed birth, to the son of the wife, and the like. Else the son begotten by a known person, without authority for that purpose, would be another son of a similar description with the son of the wife. Nor is this reasonable; for MENU has provided against it (CCXXXIV). It should not be affirmed, that he may belong to the husband of his mother, although

* The same with the *Múrdhábhishta* of MENU. T.

though his right of inheritance be denied. The difficulty vanishes, if he may fulfil the duties of a son towards his real father (as a daughter's son *towards his own father*), although he belong to the husband of the wife. Nor should it be asked, what proof is there that he may discharge filial duties, since the twelfth son, mentioned in the text of VISHNU (CLXXXV), is explained in the *Retnâcara*, from the concurrent import of the texts of VASISHT'HA and others, as signifying a son by a *Ṣūdrâ*. He is described by *APASTAMBA* as son of his natural father.

CCLI.

APASTAMBA :—Let cautious men guard their offspring, and suffer not the seed of a stranger to be sown in their fields.

β' A son belongs to his natural father; the wife deem such offspring useless in another world.

From the mention of another world it appears that the child is, to his natural father, a son capable of performing for him such rites as respect another world. The meaning of the text is this: cautious men, or those who are not heedless and negligent, guard their offspring, their son, and son's son, and the rest; and they are careful that the seed of a stranger be not sown in their fields, meaning their wives. He subjoins the reason; because the son belongs to his natural father, and is useless *to the husband of the mother* in respect of another world. Such is the exposition approved in the *Retnâcara*.

CCLII.

MENU :—They who are acquainted with past times have preserved on this subject holy strains chanted by every breeze, *declaring*, that “seed must not be sown in the field of another man.”

2. As the arrow of that hunter is vain who shoots it into the wound which another had made just before

- fore in the antelope, thus instantly perishes the seed which a man throws in the soil of another.
3. Sages, who know former times, consider this earth (*Pṛī't'hivī*) as the wife of king PRÍTHU ; and thus they pronounce cultivated land to be the property of him who cut away the wood, *or who cleared and tilled it* ; and the antelope, of the first hunter, who mortally wounded it.
 4. Then only is a man perfect, when he consists of *three persons united*, his wife, himself, and his son ; and thus have learned *Bráhmanas* announced this *maxim* : “ the husband is even one person with his wife,” *for all domestic and religious, not for all civil purposes.*
 5. Neither by sale nor desertion can a wife be released from her husband : thus we fully acknowledge the law enacted of old by the Lord of creatures.
 6. Once is the partition of an inheritance made ; once is a damsel given in marriage ; and once does a man say, “ I give :” these three are, by good men, done once for all, *and irrevocably.*
 7. As with cows, mares, female camels, slave girls, milch buffaloes, she-goats, and ewes, it is not the owner of the *bull or other* father who owns the offspring, even thus is it with the wives of others.
 8. They who have no property in the field, but, having grain in their possession, sow it in soil owned by another, can receive no advantage whatever from the corn which may be produced.

The meaning of these texts is subjoined : as the arrow is vain which is last shot into the vacant wound of an antelope already struck by another, (the antelope not being thereby gained, because the first hunter, who mortally wounded it, is alone entitled to it ;) so that seed is lost which a man sows in soil already owned by another ;

another ; *for*, he does not thereby obtain the son *produced*, but the husband alone has a right to the child *born of his wife*. If he who enjoys the woman absolutely take her, to whom does her son belong? To this question it is answered, the right is null, since she had been already taken by another : Sages consider this earth, which became the wife of PRĪT'HU, as wife of him alone, though subsequently possessed by other kings ; so, that woman who has been already espoused by one, and is afterwards seized or enjoyed by another, belongs to him alone *who first espoused her*. In like manner, cultivated land, or ground tilled for corn or the like, belongs to him who cleared the forest, and extirpated the remaining trees, of which the trunk and branches had been felled, not to him who subsequently tills the soil : and, in like manner, the antelope becomes the property of him who secured possession by mortally wounding it, not of him who first seizes the dead animal and runs away. Still, may not another become owner of a woman, as of any other thing, by purchase or the like? The lawgiver subjoins an answer, with the grounds of it : then only has a man due weight, *when he consists of three persons united*. Consequently one man consists of three persons, his son, his wife, and himself ; as the sacrifice, called *ders'a*, *consists of three acts of religion**. To this purpose words of scripture are inserted by CULLÚCABHATTA “(*the husband is even one person with his wife*)”. How then can what is consubstantial with one become consubstantial with another? Notwithstanding gift or sale, she remains his wife, and becomes not the wife of another : this answer is expressly given ; neither by sale nor by desertion does she cease to be his wife. As for desertion, mentioned among the sins of various degrees†, that relates to abandonment in civil matters ; she is not thereby divorced. Hence she forfeits not her claim to the family of her husband ; and, the offence being expiable by penance and the like, impurity *only* is contracted. As partition of inheritance among brothers is made once only, and must not be repeated to subvert *a former* partition without a sufficient cause, and

* The *ders'a yāga* includes and requires the performance of the *prayāja yāga*, and this again requires the *idāyāga* : the *ders'a yāga* is a principal sacrifice performed on the day of new moon, as the *pournamās'a yāga* is performed on the day of full moon. T.

† MENU, Ch. XI, v. 60.

and as a man once only says "I give," (and consequently a thing which has been bestowed on one ought not to be given to another;) so a damsel is given by her father once only, and to one bridegroom. It follows of course, from the maxim, once only does a man say "I give," that a damsel can only once be given; is it not a vain repetition to add, "once is a damsel bestowed in marriage?" CULLÚCABHATTA replies, it is incidentally mentioned that chattels in general are once given, and partition of inheritance once made; the single gift of a damsel being the subject of the text, it is repeated: this text intimates that the offspring of a woman first given to one man, and afterwards obtained by another from her father or other relative, belongs to him alone on whom she was first bestowed. The subsequent text (CCLII 7) is plain; and the last verse contains a comparison. The import of these texts is particularly explained under the title of Duties of Man and Wife: the literal sense is here exhibited, for MENU declares that the produce belongs to the owner of the soil.

It should not be argued that these texts relate to the *express* appointment made by the husband for the sake of obtaining issue. Were it so, it would follow, that, in the case of a daughter appointed as above-mentioned, her son would be considered as the son of her husband; and the comparison in a former text (CCXXXVI) would be unequal. If this be alleged, some reply, 'in the case of an appointed daughter, the damsel is given to a known person for the sake of raising up issue to *her father* himself; in the case of one who uses *his wife* himself, there is no delivery of her for the sake of obtaining male issue: such is the difference.'

CCLIII.

MENU:—They consider the male issue of a woman as the son of her lord: but, on the subject of that lord, a difference of opinion is mentioned in the *Vêda*; some giving that name to the real procreator of the child, and others applying it to the married possessor of the woman.

2. The woman is considered in law as the field, and

the man as the grain : now, vegetable bodies are formed by the united operation of the seed and the field.

3. In some cases the prolific power of the male is chiefly distinguished ; in others, the receptacle of the female : but, when both are equal in dignity, the offspring is most highly esteemed.

Sages hold generally, that the male issue of a woman is the son of her lord ; but whether that lord be the married possessor of the woman, or the real procreator of the child, *is questioned* ; on this point the sense of scriptural texts is doubtful : such is the meaning of the first verse. As for what is affirmed, that whichever is chiefly distinguished in respect of procreation, whether the married possessor of the woman, or the real procreator of the child, to him does the son belong ; still a doubt remains, for both are important. Comparing offspring to other organized bodies, the legislator adds, “ the woman is considered as the field, &c : ” all organized beings, even vegetable bodies, are formed by the united operation of the seed and the field. Consequently the soil and the grain equally contribute to reproduction ; and it remains a doubt whether the son belongs to the owner of the field, or to him who is considered as the grain. The lawgiver reconciles the seeming difficulty by distinguishing parallel cases : “ in some instances the prolific power of the male is chiefly distinguished,” or is most important, &c. To what different cases is their comparative importance referred ? In what instances is the real procreator chiefly considered, and in what cases the husband or owner of the field ? To this CULLÚ-CABHATTA replies, the real procreator is chiefly considered, when a child is begotten by a stranger on a wife not duly authorized for that purpose ; the husband, when the wife has been expressly appointed *to raise up issue for him*. Accordingly BUDHA *, begotten by CHANDRA on the wife of VRĪHASPATI, who was not authorized for that purpose, was son of CHANDRA, not of VRĪHASPATI : VYÁSA, begotten by the sage PARÁSARA on

* First of the lunar race of princes. T.

on SATYAVATÍ then unmarried, was son of PARÁSARA, not of DAŚARÁJA her foster father, nor of the king UPARICHARA her natural father. The receptacle of the female is chiefly distinguished in some cases: for example, DHĪTARÁSHTRA and PÁNDU, begotten by VYÁSA on the two wives of VICHITRAVÍRYA* (AMBALICÁ and AMBICÁ), were considered as sons of VICHITRAVÍRYA. It should not be argued, that there is no want of ground for selection: if it be agreed that the produce shall belong to the owner of the seed, then it shall belong to him alone; otherwise it belongs to the owner of the field. The effect being produced by the intimate connexion† of the seed, there is in a manner no difference between them. But the field, being merely a receptacle, is inferior to the grain. MENU states this as an induction of common sense, and subjoins the reason in the second hemistich.

CCLIV.

MENU:—In general, between the male and female powers of procreation, the male is held superior; since the offspring of all procreant beings is distinguished by marks of the male power.

Because the produce is distinguished by unaltered marks of the seed, denoting the peculiar form of its prototype, therefore is the seed held superior. He expresses the same thought in the subsequent verse:

CCLV.

MENU:—Whatever be the quality of seed scattered in a field prepared in due season, a plant of the same

* Forty-sixth of the lunar race. T.

† One of the categories in dialectick philosophy. It is the connexion of integrant parts with that of which they are parts; the connexion of class with individuals, of quality with subject, of action with the agent or with the subject: in short, it is intimate and sempiternal connexion, distinguished from conjunction, which is an accident, and placed among qualities in a philosophical arrangement. T.

same quality springs in that field with peculiar visible properties.

There is no vain repetition ; but an amplification of the sense, and a demonstration of the maxim contained in the preceding text. For this objection might have been made : seed cast on fertile soil produces the best fruit ; sown in ungrateful soil, the worst : hence it should be affirmed, that intimate union with the constituent particles of earth also contributes to reproduction. That objection is here obviated : seed scattered in a field prepared in due season, that is, thoroughly tilled by the cultivator at the proper season for sowing, produces the best fruit ; not so if the land be tilled at an improper season : can it be therefore argued, that intimate union with season also contributes to reproduction ? Hence it should be only affirmed that a distinct effect proceeds from a distinct cause. There is no difficulty, nor possible reply ; for time, having no constituent particles, cannot be intimately united with substance, *as a plastick cause with an effect.*

CCLVI.

MENU :—Certainly this earth is called the primeval womb of many beings ; but the seed exhibits not in its vegetation any properties of the womb.

For the sake of distinction, he mentions the earth considered as a womb. Seed assumes not any properties of the womb, that is, of the earth, such as blackness, adhesion of sluggish particles, and the rest. A plant vegetates, being produced in fertile soil, as above mentioned. The constituent particles of earth might be supposed to enter into the plant, because vegetation consists in the increase of component parts : but the inference would not be accurate, for the properties of the soil, such as blackness and the rest, are not found in vegetating bodies, although their component parts be increased. As a jar, produced from a black lump of clay, is black, not so these *vegetable substances*. It should not be objected, that the plant, produced from grain, does not retain the small bulk of the seed : a small germin is first produced

duced from the minute originary particles of the seed, which become fixed ; afterwards the same plant grows by *assimilating* particles of earth and of water, which are most important in comparison with those which are foreign. Hence the seed is chiefly distinguished, because it is a prior cause ; the earth is not *so* distinguished, because it is a subsequent cause ; what is foreign *to reproduction* is neither chiefly distinguished nor undistinguished, but *wholly unnoticed*. Accordingly, a son begotten on a woman duly authorized by her husband, belongs to *him considered in law* as the owner of the field ; not to a stranger, even though she were appointed by that stranger to raise up issue for him. It should not be affirmed, on the contrary, that a plant is first produced from the component particles of earth, and grows from the component particles of the seed. Were it so, plants of an uniform kind would be produced when seeds of various sorts are scattered in the same soil, as plants of an uniform kind actually are produced when seeds of the same sort are scattered in various soils.

CCLVII.

MENU:—On earth here below, even in the same ploughed field, feeds of many different forms, having been sown by husbandmen in the proper season, vegetate according to their nature :

2. Rice plants, mature in sixty days, and those which require transplantation, *mudga*, *tila*, *másha*, barley, leeks, and sugar-canes, all spring up according to the feeds.
3. That one plant should be sown, and another produced, cannot happen : whatever seed may be sown, even that produces its proper stem.

Accordingly seed watered in a vessel of hardest iron puts forth a shoot, even without soil ; but earth alone, sprinkled with water, produces no plant without seed. Does not earth sprinkled with water produce grass and other plants, which have not been sown ?

sown? and is it not consequently found that, in some instances, soil does produce plants without seed? It should not be argued, that the superior influence of the soil may be true in respect of grass and weeds; but the seed is sometimes chiefly distinguished in *the reproduction of corn and the rest*: hence they are alone mentioned in this place by way of illustration. There exists no argument to suggest this distinction, that the superior influence of the soil, as the natural cause of production, is deduced from the instance of grass and weeds; and the superior influence of the seed, from the instance of corn and useful plants. To the question proposed, the answer is, no; for even seed appertains to the terrene element*. Thus it is observed in a gloss on the words of UDAYANÁCHÁRYA, in his metrical rules of logick, (“colours like those of a germin and of a scorpion,”) that the stem of the plantain springs from the seed of burnt canes. The reason is, that all vegetable, mineral and animal bodies are produced from the minutest particles of earth, called atoms, by means of inchoative union†; but such particles being in no respect dissimilar, since they are eternal, the plastick centers‡ of various kinds spring from adhesions mutually dissimilar. It should not be asked, how can barley, and other plants which bear seed, such as corn and the like, be said to spring from a mass of earth alone, since such particles exist in the seed as well as in the mass of earth? A special adhesion is presupposed, which produces barley and other plants from component particles, to which a special adhesion belongs, connected with seed by its own nature, or by air fixed by the will of GOD: and, from the effect observed, an adhesion is presumed, which sometimes produces plants, even from particles to which adhesion relative to other seed belongs; as the stem of a plantain springs from the seed of burnt canes. In like manner, in the case of grass and weeds, they are considered

* That is, all seed is earth, and the seed of grass and other weeds exists in the soil, though not sown there by human design: I should wish to attribute this sense to my text. T.

† *Aravdha*, or *arambaca*, inchoative: by inchoation seems to be meant the first plastick union of atoms. T.

‡ *Sanst' bāna*, an incipient body formed by the primary adhesion of particles, to which others are assimilated in its progress to a sensible form. T.

dered as produced from such particles, to which an adhesion relative to the terrene element belongs. Neither is the superior influence of the soil thence inferred; for seed is not mentioned as *useless to reproduction*, nor as *contributing to it in an inferior degree*: and holy Sages affirm, that the seeds of all vegetables were placed in the earth subsequently to the creation.

Srī Bhāgavata :—Surely thou shalt not foolishly disobey my commands, and abandon the seeds originally created by the self-existent, and *now* concealed in thee.

By the expression “concealed in thee,” it is intimated that all seeds were placed in the earth. Accordingly the divine CĀLIDĀSA says,

“This universe of moving and unmoving beings is celebrated as the production of that prolifick seed which was sown in the waters by thee, O unborn being!”

And again :—“She, whom the wise call Nature, fostering all feeds.”

The first verse contains praise of BRAHMĀ uttered by the Gods. “Unborn being! the universe, consisting of moveable and immoveable substances, is the production of that seed which was sown in water by thee, at the beginning of the world, when water alone had been created.” Consequently the earth, containing seed which is the source of animate and inanimate beings, sprung from the united operation of seed and water.

It should be here remarked, that the body of a son being produced from the union of the seminal fluids of the male with the uterine blood of the female, as declared by VASISHT’HA (CCLXXIII), both ought to be considered as important *in generation*; but this agrees not with the examples stated as analogous. If this be alleged, the answer is, the text of VASISHT’HA is intended to require the assent of the mother to the donation, sale or the like, though she be not chiefly distinguished; for

for *the first part of* it concludes by declaring, that both parents have power to give, to sell, or to desert a son. This does not contradict the superiority of the male compared with the female. It should not be objected, that there is no argument to support this induction, since the component particles of animated body proceed equally from seminal fluids and from blood. The seminal fluids are immediately connected with life, *and therefore most important.*

Srī Bhāgavata :—To produce the body of a living being, by an act governed by destiny, a drop of male seed must enter the womb of the female.

Accordingly, even without *a natural* soil, DRŌṆA was produced from the seed of BHARADWĀJA deposited in a wooden bucket (*drōṇī* *), and others in similar modes †, but no one ever sprung from the field alone without seed. BHAGĪRAT'HA and others have been produced, like the self-existent, by the power of absorbed contemplation. But the short-lived men of the present day cannot procreate issue without a receptacle. Accordingly UDAYANĀCHĀRYA says, “ By the experienced decline of birth, of initiating ceremonies, of science and the like, of power, of sacerdotal duties and acts of religion, the present race has degenerated.” Common sense shows, that the component particles of the offspring are of the same nature with those of the father and mother, being *produced* from the intimate union of seminal fluids and uterine blood. Consequently, if the wife be committed *to another* for the sake of raising up issue, the offspring belongs to the husband of the wife ; but if there were no such *declared* intention, he belongs to the natural father. Thus do authors expound the law.

But some hold, that a son procreated on the wife of another is competent to perform rites which respect another world, for his natural father only, not for the husband of his mother, though belonging of right to him : for it is said in the text of 'APAS-TAMBA, “ the wife deem such offspring useless in another world”

* A vessel used in boats to throw out water, and for other purposes. T.

† According to the legends of the *purāṇas*, AGASTYA sprung from the seed of PULASTYA deposited in an earthen vessel. T.

world" (CCLI). MENU has declared, that the produce belongs to the owner of the field (CCLII); but he intimates, that rites which respect another world must be performed for the natural father (CCLIV). In some cases, that is, in respect of acts relative to another world, the prolifick power of the male is chiefly distinguished; in others, that is, in respect of acts relative to this world and consequent to property, the receptacle of the female is chiefly distinguished.

It may be accurately affirmed, that the son of concealed birth becomes the son of his mother's husband, because there is no other owner (since the real procreator cannot be discovered), and because he is deserted by his natural father.

The son of concealed birth is described by VISHNU as sixth in rank (CLXXXV), to show that he shall not take a full share and so forth, if there be a son by a woman twice-married, and a son of a young woman unmarried, who are superior to him by good qualities and class. This shall be further explained in the section on the Son of a young woman unmarried. By the consent of almost every legislator, he may take the inheritance of a kinsman, as well as that of his father. According to HÁRITA, a nineteenth part shall be given to the son of concealed birth (CCXIX); according to the *Brahme purána*, a sixth part (CCXVII); according to SANC'HA and LIC'HITA, one share (CCXLVII): for "the rest" intends the son by a twice-married woman, the son of an unmarried girl, and the son of concealed birth. He claims the family and lineage of his mother's husband.

SECT. VI.—*On the Son of a young Woman unmarried.*

He is fifth in rank according to YÁJNYAWALCYA; for, after describing the fourth, or son of concealed birth, he thus describes the son of an unmarried girl.

CCLVIII.

CCLVIII.

YÁJNYAWALCYA:—The *cánina*, or son born of a young woman unmarried, is considered as the son of his maternal grandfather.

VASISHT'HA also assigns him the fifth place, but superior to the son of concealed birth, and inferior to the son by a twice-married woman.

CCLIX.

VASISHT'HA:—The son of an unmarried girl is fifth: he whom an unmarried damsel produces through lust, in her father's house, is called son of a young woman unmarried, and is considered as the male issue of his maternal grandfather.

CCLX.

The maternal grandfather becomes a father by the birth of that son whom his unmarried daughter produces from a man of equal class: such a son may offer the funeral cake, and possess the heritage.

“Through lust;” explained in the *Retnâcara*, acting from the impulse of her own will. Ungiven signifies “unmarried.” From an equal *man*; “from a man of equal class;” that is, from a man not inferior in class. Consequently, if an unmarried daughter, impelled by lust, receive the caresses of any man she may have chosen, and bring forth a son, that child belongs to his maternal grandfather, and is called the son of a young woman unmarried.

CCLXI.

BAUDÁYANA:—The male child begotten by a man
of

of equal class, on a damsel whom he embraces unmarried and unaffianced, in her father's house, is called the son of a young woman unmarried, and becomes the child of him to whom she is afterwards given in marriage.

He is considered as son of him to whom that maiden is given in marriage. This disagrees with VASISHT'HA and YÁJ- NYAWALCYA. It should not be affirmed, that the word *cānina* is here taken in the sense suggested by its etymology; consequently the son procreated while she was a maiden (*canyā*) is called son of a pregnant bride (*sahō'd'ha*) and belongs to the married possessor of that woman; he is not named *cānina*: and hence there is no contradiction. The son of a pregnant bride is separately mentioned by NĀREDA.

CCLXII.

NĀREDA:—The husband is considered as father of the son produced by *his wife while she was yet a maiden*, of the son produced by a pregnant bride, and of him who is secretly begotten on a disloyal wife: they are held entitled to shares of the heritance.

And MENU, having described the son of an unmarried girl (CCLXIII), proceeds to the separate mention of the son produced by a pregnant bride (CCLXXXVIII).

CCLXIII.

MENU:—A son whom the daughter of any man privately brings forth in the house of her father, if she *afterward* marry her lover, is described as a son begotten on an unmarried girl*.

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Nor

* I do not alter the translation (Chapter ix. V. 172): but the commentary furnishes another interpretation.—See a subsequent note.

Nor should it be affirmed, that the texts of VASISHT'HA and YÁJNYAWALCYA suppose a declaration in this form ; " her son shall be mine." Were it so, she would be an appointed daughter, and it would be wrong to name her son as fifth in rank. If this be proposed, the answer is ; if the maternal grandfather have no male issue, then the son begotten on his unmarried daughter is considered as his son ; if the bridegroom have no other male issue, the child is considered as his son ; and if neither, or if both, have male issue, he is considered as son of both.

CHANDÉSWARA.

Being son of both, though not begotten by one related by blood to the maternal grandfather, he claims the family of that ancestor only. In respect of double sets of oblations and the like, the practice is similar to that followed by the son of a wife considered as son of two fathers.

Here a doubt occurs ; how can the child be son of the bridegroom, since the field did not then belong to him, and the son is not produced from his seed ? Some reconcile the seeming difficulty by saying, the sense of the text is not rigorous in this instance. But others hold, that, grain being already produced in a field which had become waste, and that land being afterwards seized by any person, as the grain should also be taken by him, so, in the present instance also, *the offspring should belong to the subsequent possessor of the mother.* Should not that crop only, which is then produced, be taken by the present owner of the field, else he might claim the crops long since produced from that field ? In like manner, in the case of an unmarried girl, the father alone has a claim to the maiden, and her offspring therefore belongs solely to him. If this be alleged, the answer is, while she continues a maiden, the father is only acknowledged to have such right as empowers him to give her in marriage, and no other : accordingly, he must not enjoy her, or the like. A son, therefore, becoming the property of his mother, because he is produced from uterine blood, belongs to her alone.

How then are the words of VASISHT'HA and YÁJNYAWALCYA justified ? It should not be argued, that the dominion of the father over his daughter is admitted by these Sages ; but that fruition is forbidden by positive law, like fruition of a female buffalo, or the like, held as property. Were it so, various opi-
nions

nions being delivered by Sages, we should have no certainty which ought to be followed. Nor should it be argued, that the different cases intended have been already distinguished: he becomes the son of his maternal grandfather, or of the married possessor of his mother, whichever has no son; consequently, there is no want of certainty. If the right of one be ascertained from reasoning, it is nothing to the purpose that another has no male issue. His maternal grandfather dying after his mother's marriage, if the child then became son of his maternal grandfather, and if *tonsure and other* ceremonies of his regeneration be performed by the family of that ancestor, how can he also become son of his mother's husband, when this man subsequently dies? Since he cannot be *truly* son of both, by which family shall his investiture and other ceremonies be then performed? On this point there is no certainty. Again; the son of a pregnant bride would be similar to the son of an unmarried girl, for he also was *in fact* procreated at the moment when pregnancy took place: but he is not given at the time of marriage, for the child is distinct from the woman to be wedded; and if he can be the son of two fathers, it is not proper to describe him as son of a single father. It should not be argued, that, as the clothes are also bestowed when a damsel is given with ornaments and clothes, so the foetus is also bestowed when a pregnant daughter is given: the son of a pregnant bride, therefore, is not son of his maternal grandfather. Were it so, his affiliation being deduced from donation alone, a distinct partition, and separate share from that of a son given, would be improper; and the man who marries a pregnant bride, might enjoy a daughter born from that pregnancy*.

On this subject it is said, such offspring as the son of an unmarried girl belongs to both; because the mother has a claim to that child, since he sprang from her blood; and the maternal grandfather has also a claim, since he then possessed dominion over the mother: hence the man who espouses her claims the mother's share, for a wife has no property exclusively her own (Book II, Chapter IV, v. LVI). It should not be objected, that her father alone has an immediate right to her son, though
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springing

* Because she was given to him, but does not become his daughter. T.

springing from her blood, because even the blood of the daughter was subject to the dominion of her father. Were it so, a mother would have no claim to her son born in lawful wedlock, and the gift of her child would not depend on her assent, as declared by VASISHT'HA. It should not be argued, that, admitting the mother's power, the father has nevertheless a sole claim to the son born in lawful wedlock, because he has a natural right, since the son was generated from his seminal fluids; and the right accrues to him alone, even though the child be produced from uterine blood: a mother, therefore, has such a claim as the father has to the son of a wife begotten by a kinsman, and as the maternal grandfather has to the mother. Nothing can prevent the right of a husband to the property of his wife, as declared by a positive text (Book II, Ch. IV, v. LVI). Nor should it be objected, that a stepmother would have a claim on the son of another wife, under the text which declares property common to the married pair (CCCCXV). That is admissible; it will be mentioned in the section on Sons Given, that the son shall offer the double set of oblations and the funeral cake for her father.

We do not discover the reason why authors have said that he succeeds as a son to his maternal grandfather, or to the man who espoused his mother, if either of them leave no male issue. It should not be argued, from the text of YÁJNYAWALCYA (CCXXXVIII), that, as the want of male issue is mentioned as a prescribed condition in the case of the son of a wife begotten by a kinsman, *so is the same required* in the present case. SÚLAPÁNI, author of a commentary on the institutes of that legislator, refers this text to the case where a son is begotten on a wife *by a kinsman or stranger*, with a previous *declaration or implied intention*, to which both parties assent, "the child shall be considered as the offspring of us both;" to which case NÁREDA *likewise* alludes (CCXXXIX). The words, "by one who has no male issue," are inserted *in the text* (CCXXXVIII), that the intention of the procreator may be fulfilled if he need offspring; for, he who has male issue can hardly need a son begotten on the wife of another; and one who has no progeny, of course, does need that son. Nor should it be argued that authors have said so, because his affiliation is null, if there be a son

son begotten in lawful wedlock, or other son of the *first* four descriptions. There is no argument to prove, that, if there be a son begotten in lawful wedlock, no other can be legal issue; the son of a pregnant bride and the rest are acknowledged, *although other sons exist*; and the appointment of a daughter to raise up issue to MENU (the founder of memorial law), whilst he had legitimate sons, could not be justified. Nor should it be argued that they have said so, to intimate his disqualification for offering the funeral cake to him who leaves any one of the four sons first described, as suggested by the text of YÁJNYAWALCYA (CLXXXIX). That is mentioned *in the text cited*, to show that the son of an unmarried girl is disqualified, if one begotten in lawful wedlock, or other superior son, exist, as a younger child is disqualified if his eldest brother be living. Else, becoming the son of the bridegroom, because the paternal grandfather at that time had male issue *living*, he shall not offer the funeral cake, even though the son of the maternal grandfather afterwards die; for, having once become the son of the bridegroom, that relation cannot afterwards cease. Again; if both a son of the body, and one begotten on a wife by a kinsman, exist, the right vesting in him alone who was begotten in lawful wedlock, shall not the son of the wife offer the funeral cake, if the son of the body afterwards die? It must be therefore affirmed, that, "on failure of the first" (CLXXXIX), signifies 'the first, qualified to perform the *śrādd'ha* and the like, not being alive.' But, if it be said, we do not deny the right of both to the son of a young woman unmarried, but we deny his competence if there be a superior son to obstruct his claim; then this opinion coincides with our own. It is our opinion, say these lawyers, that by him is effected deliverance from the hell called *put*, and relief from the evils caused by the want of male issue, for his maternal grandfather, under such circumstances, and until his mother be married; and for the man who weds his mother, if no other son be procreated by him on any wife.

From the terms used in the text of MENU (CCLXIII), it appears that a child privately brought forth is alone considered as the son of an unmarried girl, not one whose real father is known; for, were it so, since the seed is superior to the re-

ceptacle, he would be considered as the son of his natural father*. He is described by MENU as seventh in rank, and inferior even to the son given, the son made *by adoption*, and the son rejected (CLXXVIII). DÉVALA describes him as fourth in rank (CXC); and so does NÁREDA (CLXXVIII). VISHNU and VASISHT'HA (CLXXXV and CCLIX) assign to him the fifth place, but inferior to the son by a woman twice married, and superior to the son of concealed birth. HÁRITA virtually places him sixth in rank (CCXIX) †. To reconcile such seeming contradictions, authors have approved a regulation founded on the various degrees of virtue. The difference of class might be also considered: for instance, the son of an unmarried girl, being procreated by a man of inferior class, is sixth in rank, if imbued with bad qualities; or seventh, if imbued with very bad qualities. No one has described him as inferior to the son of a pregnant bride; what then shall be the rule if the son of an unmarried girl be deficient in virtue compared with such a son? By parity of reasoning, the son of the pregnant bride shall alone take the inheritance; for vice is stated in the following text as a fault which excludes a man from inheritance; and it is reasonable that one who is deficient in virtue shall have a less share, if there be a virtuous son.

CCLXIV.

VRIHASPATI:—Though born of a woman equal in class, one who is not virtuous shall have no claim to the paternal estate; it is ordained to devolve on those learned priests who offer the funeral cake to the deceased ‡.

But,

* It should therefore seem necessary to alter the version of that text, by substituting "a bridegroom" for "her lover;" or by changing the construction: "A son whom the daughter of any man privately brings forth in the house of her father, is described as a son begotten on an unmarried girl, and belongs to him who afterwards marries her." T.

† See v. CLXXXVII, where he is placed fourth in the enumeration of sons. T.

‡ The text at large is here inserted from a subsequent section. It was partially and anonymously quoted in this place. See the interpretation in a subsequent Chapter, v. CCCXIX. T.

But if they be equal in good qualities, affinity by birth and legitimacy should be considered. He who is a son given, is obtained by acceptance of donation; the son made *by adoption* was similar to unowned property; the son of an unmarried girl is obtained in right of the field; a son by a twice-married woman is a child of the body, but produced by the adultery of his mother; a son of concealed birth is the offspring of the wife, *at the same time* possessing the general nature of unowned property. Consequently, a son by a woman twice married, being procreated by a man himself, his affinity by birth is greater; a son of concealed birth, being procreated by another, while the mother belongs to the adoptive father, his affinity is less: the son of an unmarried girl is inferior to him, because the adoptive father was unconnected with the mother at the time of his birth; but is not inferior, *considered as the son of her father*, because the maternal grandfather then had a right *over the mother*: these, however, are not begotten by the married possessor of the mother. A son made *by adoption*, and a son given, may have been procreated by the lawful husband of the mother, but they are not related by birth *to the adoptive father*.

The proof is subjoined: relation by birth, as declared by the law, must be affirmed superior to legitimacy in respect of the right to inherit and to perform obsequies; else, that right would belong to the sister's son or other collateral, even though a son of a pregnant bride, or other representative, exist. Consequently, although a son given, or a son made *by adoption*, do exist, the son by a twice-married woman has a prior title; and that is declared by VISHNU and VASISHT'HA. His inferiority, declared by YÁJNYAWALCYA, must be explained by the difference of good qualities and class. For the distinction between a crop produced from seed belonging to the man himself, in a field appertaining to a deceased owner, and the crop produced from the seed of another, now deceased, in a field belonging to the man himself, must be deduced from the pre-eminence of the seed.

Is not the seed in this case similar to a waif? for the owner is not discoverable: but the field belongs to the adoptive father; and the son of concealed birth is therefore superior. A twice-married woman belongs to her first husband, even though a second marriage actually take place: property being once vested,

it is not acknowledged to fail, even though her husband die (CCCCCLXXVII 2); the offspring of a twice-married woman, being therefore produced in the field of another, is so far inferior. As for the son of a young woman unmarried, since a daughter, *afterwards* obtained by gift *from her father*, has not *already* produced lawful progeny, her *illegitimate* offspring is inferior to the son of concealed birth. That should not be affirmed; for, the natural father being unknown, the son of concealed birth is allied *to his adoptive father*; and, the owner of the soil being unascertained, the son by a twice-married woman is allied *to his natural father*.

Some commentators hold, that a son begotten on the wife of another, with an agreement in this form, "she is mine," is the son of a twice-married woman described by VISHNU as superior in rank. But if no such agreement be made, he is inferior, being mentioned by YAJNYAWALKYA as sixth in rank. For example; the son procreated with the consent of the husband, expressed in this form, "the offspring shall belong to us both," and the third son begotten on the wife of another, (who becomes son of his natural father, as shown by the text of GOTAMA,) are children of twice-married women.

CCLXV.

GOTAMA:—Let not *issue be procreated by appointment* beyond a second son; *else*, the offspring shall belong to the natural father, or, by private agreement, to another: *but a son begotten* on the wife of a living man, belongs to him, or, by special agreement, to another by whom he was procreated; or he shall belong to him who maintains the mother, in right of that support; or to both, *if they need sons*.

CHANDÉSWARA thus expounds the text: let not him who is appointed to raise up issue, pass the second procreation, and beget a third or other son, in consequence of that appointment.

If

If he do procreate further offspring, it belongs to the natural father. By a private agreement in this form, "all the progeny shall be mine," the further offspring belongs to another, namely, to the husband of the mother. That offspring which is begotten on the wife of a living husband, who is incapable of procreation, belongs to the husband, even though such offspring be third; or, by special agreement, being procreated by another on the wife of a living husband, he belongs to the natural father: but if another, namely, the natural father, support the wife, the first issue belongs to him; if he do not support her, to the husband; or if the husband maintain her, to him. The term used (*bhartri*) here signifying the person who supports her, the meaning is, that the son belongs to him who maintains the mother, in right of that maintenance: but if both need male issue, that offspring belongs to both.

But a son of concealed birth appertains solely to the mother, if the natural father be unknown.

CCLXVI.

NÁREDA:—Soil would not be *productive* without feed, nor is feed *productive* without soil: hence offspring is in law considered as belonging to both the father and the mother.

Father here signifies the natural parent. Hence the claim of the mother's lord arises solely from his right over her: and, the *Cálicá purána* expressing that a wife affords connubial joy and male issue, she prevails before a daughter in respect of male issue; the son of concealed birth shall therefore succeed in the first instance; after him the son of a young woman unmarried: such is the opinion of YÁJNYAWALCYA. The son of an unmarried girl is described by MENU as seventh in rank: that proceeds on the supposition of his becoming the son of him who marries the mother, as declared by MENU himself; he is indeed inferior, because he is not produced at a time when the adoptive father had property in the mother. NÁREDA, acknowledging the son of a young woman unmarried to become the child of him who marries her,

her, describes him as superior to the son of concealed birth : that supposes transcendent virtue. This will become obvious from the further discussion of the subject. VISHNU and DÉVALA also suppose the son of an unmarried girl to be endowed with good qualities. In other cases, say these commentators, the seeming contradictions should be reconciled in a similar mode.

SANC'HA and LIC'HITA, DÉVALA and others, describe the son of an unmarried girl as heir to collateral relations ; MENU, BAUDHAYANA and others describe him as heir to his father and mother only. On this some lawyers remark, that his right of inheriting from his father, being declared in the institutes of MENU, which prevail over all other codes of law, is alone consistent with propriety. That is wrong ; for, were it so, SANC'HA and the rest would have no authority. Therefore, a son of an unmarried girl, considered as the child of two fathers, shall, in conformity with the text of MENU, take the estate of him who became his father by marrying his mother, not the estate of that father's brother or other collateral : but he shall take the estate of the brother or any other kinsman of his maternal grandfather considered as his father, in conformity with the texts of NÁREDA and the rest. Such being the case, is there not an imperfection *in the texts* compared with each other ? It should not be answered, that such a son of an unmarried girl is comprehended in the text of MENU under the appellation of a son rejected. Were it so, the son rejected by his natural parents, and such a son of an unmarried girl, would have equal shares. But it is not so, for he may be also comprehended in the text by the particle subjoined to the word rejected (CLXXXVIII 2), *considering it as relative to another word understood*. The order explained in the section on Sons Given, must be assumed as it is delivered by YÁJNYAWALCYA and the rest. It should not be objected, that still there is an inconsistency with the text of NÁREDA, because he describes the son of an unmarried girl as the child of him who marries her, and as heir to the kinsmen of his father. The difficulty is removed by establishing, that he is considered as son of his maternal grandfather, in the text wherein he is described as heir to kinsmen : it cannot be said, that what is contemplated by YÁJNYAWALCYA, is not contemplated by NÁREDA. This subject will be further discussed in the section on Sons Given.

Other

Other sons, says VRIHASPATI, namely the son of the wife and the rest, shall respectively share a fifth, a sixth, and a seventh part (CCXLVI) : that is, the son of a wife shall have a fifth ; the son of an unmarried girl a sixth ; and the son of a woman twice married a seventh. Thus the *Retnâcara*. But it may be objected, what harm would there be in saying the son of a wife and other five sons shall have a fifth, a sixth, or a seventh part, according to the difference of their possessing good qualities in an *eminent degree*, or possessing them in a middle degree, or being wholly deficient in virtue ? HÂRITA directs that a twenty-first part shall be given to the son of an unmarried girl (CCXIX). The *Brahme purâna* allots an eighth part to him (CCXVII). SANC'HA and LIC'HITA ordain one share each for the rest (CCXLVII), meaning the son by a twice-married woman, the son of an unmarried girl, and the son of concealed birth. This brief exposition may suffice.

SECT. VII.—On the Son by a twice-married Woman.

He is sixth in rank according to YÂJNYAWALCYA ; for, after mentioning the son of a young woman unmarried as fifth in rank, he proceeds to describe the son by a twice-married woman.

CCLXVII.

YÂJNYAWALCYA :—A son begotten on the wife of another, whether she were *previously* deflowered or not, is called the son of a twice-married woman.

Some hold that the son who is procreated on a wife authorized by her husband in the form above mentioned, whether she were previously enjoyed by him or not, is the son of a twice-married woman.

CCLXVIII.

CCLXVIII.

CÁTYÁYANA :—The son begotten on her who, deserting an impotent or degraded husband, takes a second lord, is a son by a twice-married woman, and evidently belongs to his natural father.

This text they also consider as relating to an appointed wife; for impotence, degradation, and other motives for obtaining a son of the wife, are here mentioned, *the first expressly, the rest by implication*. Consequently, in such cases, wherein the son of the wife becomes son of her husband, either the third child, or he concerning whom it was agreed, “the offspring shall belong to us both,” is called a son by a twice-married woman; not so the child begotten on a woman who deserts her wedded lord, and connects herself with another man, saying, “I am thine.” That is wrong; for ‘SÚLAPÁNI also describes the offspring of a woman who has deserted her lord, as son by a twice-married woman; ‘a male child begotten on a widow married again, or on a woman who has deserted her lord *for a second husband*, is a son by a twice-married woman.’ She who deserts her lord is not appointed by any person whomsoever *to raise up issue*; nor would such an appointment legitimate the son of *such* a wife. Not truly becoming the son of a wife *legally begotten by a kinsman or stranger*, what prevents his being justly considered as a son by a twice-married woman? *for by that is meant*, generally, the male issue of a woman not duly authorized. Accordingly it is said in the text of CÁTYÁYANA, “deserting a husband:” and degradation and impotence are there mentioned as the grounds of desertion. That term is merely illustrative; for the male issue of a wife duly authorized is also acknowledged as son of a twice-married woman; else, *considered as the offspring of his natural father*, he would not be included among the twelve sons: and YÁJNYAWALCYA does not proceed so far as to mention desertion.

CCLXIX.

MENU :—He whom a woman, either forsaken by her
lord

lord, or a widow, conceived by a second husband, whom she took by her own desire, *though against law*, is called the son of a woman twice married.

He whom a woman, either deserted by her husband, or become a widow, produces by another man, with whom she has contracted a second marriage, is called the son of a woman twice married, and is considered as the offspring of his natural father.

CULLÚCABHATTA.

‘Having contracted a second marriage with another man,’ is the meaning of the terms employed in the text. It is thereby intimated, that the child begotten by a man who contracts a second marriage with *such* a woman, and not the male issue of her who has been duly authorized by her husband, is the son of a twice-married woman. Accordingly it is said in the *Retnâcara*, ‘he whom a woman conceived by a man of equal class;’ this is understood, and the subsequent term signifies connecting herself by marriage with another man: hence likewise ‘SÚLAPÁNI explains the term, “son of a woman twice married” (*paunerb-hava*), ‘son begotten on a woman married again.’ To this an objection occurs, that, were it so, the son who is begotten with the sanction of the husband, and who is considered as the offspring of his natural father, would not be included among the twelve sons.

Is it not admissible, that he also should be considered as exclusive of the twelve sons, like one who is begotten by force on the wife of another, with or without the knowledge of her husband; for he is not mentioned as a son by any author? It should not be argued, as resulting from the text of MENU (CCLIV), that he is considered as the offspring of his natural father: that text is explained as declaratory of the proprietary right which is vested in the owner of the seed. Nor should it be argued that he is so because ‘APASTAMBA describes him as performing rites relative to another world (CCLI), from which it follows that he is considered as a son: the text of ‘APASTAMBA expressing, “the wife deem such offspring useless,” must be explained as reprehending the adoption of a son begotten on a wife *authorized for the purpose*. If this question be proposed, the answer is in the negative; for one who has no *other* male issue is shown to have a claim on the son procreated by him upon the wife of another; and the natural

ral father did procreate a child for the sake of having a son *to perform duties* relative to another world ; else the design that the offspring shall belong to both would be vain. If the right of property were alone sought, he would have omitted intercourse with the wife of another, and purchased a slave : *or, if he procreated the child* to have a son begotten from love of pleasure, *or spurious offspring*, he must have acted under the sole influence of lust.

Since YÁJNYAWALCYA calls a twice-married woman her who is again espoused with solemn rites (Book IV, v. CLX) ; since the words “ forsaken by her lord ” occur in the text of MENU (CCLXIX) ; and a similar term (*vihāya*, deserting ; a derivative from the verb *bā* to desert,) occurs in the text of CÁ-TYÁYANA (CCLXVIII) ; and since it is a rule that reasoning must not be employed where the sense of the text is obvious : therefore a son begotten on the wife of another, with the assent of her husband, is not acknowledged to be the son of a woman twice married ; nor is the son of the fourth disloyal wife, as described by NÁREDA (Book IV, v. CLVIII 8), any more than the son of the first disloyal wife, and the rest, acknowledged to be son of a woman twice married. It should not be objected ; then BUDA would not be son of CHANDRA. Gods are not liable to be reproached by man : otherwise VYÁSA would not be son of PARÁSARA ; for SATYAVATÍ could not by any means be described as a twice-married woman, since she was not previously connected with any man. Again ; since these are not included among sons by twice-married women, they might fall within the description of a son any-how produced *irregularly*, who is mentioned by VISHNU as twelfth in rank (CLXXXV) : still the persons instanced are superior in rank, through the efficacy of devotion and power, as VISWÁMITRA, springing from a military race, became a *Bráhmāna* ; but if devotion and power be wanting, such a son is of inferior rank. Accordingly persons so born have been mentioned by Sages, with some difference of opinion, as superior almost to every son ; and Authors have derived a settled rule from the discrimination of devotion and the rest, and from *transcendent* virtue.

If this be proposed, some reply, although YÁJNYAWALCYA, when treating of the distinction between a woman twice married and a disloyal wife, describes the twice-married woman as one
again

again espoused with solemn rites, still the word (*punerbhū*), from which the term "son by a twice-married woman" (*paunerbhava*) is derived, signifies only a woman who goes to a second lord. The term which signifies desertion in the text of CĀTYĀYANA must necessarily be affirmed to be merely illustrative; else there would be a contradiction between two legislators, one describing the desertion as the act of the husband (CCLXIX), the other as the act of the wife (CCLXVIII). How can an unmarried woman, who goes, through lust, to any man she may choose, be called a twice-married woman; the word "twice or again" is irrelevant? It should not be argued that her son is not considered as such. To deny the filiation of a son produced by a woman not previously enjoyed by another, at the same time acknowledging the filiation of a son produced by a woman *previously* enjoyed by another, is inconsistent with reasoning: even he is exhibited as relieving his father from *religious* debt in the following text, which cannot be restricted to a limited sense.

CCLXX.

SANC'HA and LIC'HITA, HÁRITA and PAIT'HINAST:

—A father thrives by a son any-how produced, and is indeed relieved from *religious* debt by his oblation of funeral cakes to progenitors.

To the question proposed these lawyers reply, her male issue must be included among sons of unmarried girls. It should not be objected, that Sages have not mentioned the offspring of an unmarried girl as son of the procreator. Though not expressly mentioned by Sages, it is consistent with the reason of the law: or the child begotten by a man himself, on the wife of another, may be technically named *his* son by a twice-married woman, although the term "twice married" be not pertinent. In this manner the superior and inferior rank of various sons by twice-married women, settled according to the various opinions of many lawgivers, and their right of inheriting from kinsmen ordained by *some* legislators and denied by *others*, are justified: and in the same manner the text of VISHNU, which names the son
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by a twice-married woman as fourth in rank (CLXXXV), may be vindicated.

If the son of a paternal grandfather begotten in lawful wedlock, and the son of a brother begotten on a twice-married woman, are competitors for a succession, which of them shall obtain it? This must be regulated by the right of offering the funeral cake. The nephew, being the son of a woman again espoused with solemn rites, whom VISHNU and the rest intend by "the son of a woman twice married," is the legal heir; but if he be son of a woman not espoused with solemn rites, he is not competent *to inherit*; for that is forbidden by MENU. It should not be objected that a second marriage is stated in the text of MENU (CCLXIX); yet he describes the son by a twice-married woman as incapable of inheriting from a kinsman (CLXXVIII). The difficulty is removed by affirming that he declares this son incapable of inheriting from a kinsman, supposing him to be the son of a woman not espoused with solemn rites by *the father* himself. Nor should it be argued, that, the institutes of MENU prevailing over every other code, the series declared by him should alone be received as the general rule, and the series propounded by others should be admitted only in the case of transcendent virtue; and thus a son given, possessing a common degree of virtue, and the son by a twice-married woman, being transcendently virtuous, shall have equal shares, and shall inherit from kinsmen. As in the case of witnesses, should an equal number *on both sides* give contradictory evidence, it is directed by YÁJNYAWALCYA that their characters shall be taken into consideration, so in the present case also the same *principle* must be adopted. Nor should it be objected that in this case equality must be affirmed, because the holy legislators are very numerous, and it would be improper to notice a great or small difference in the number of *lawgivers espousing the several opinions*. Still that law which is consistent with reason must prevail, as directed by YÁJNYAWALCYA: "if two texts differ, reason, or that which reason best supports, must in practice prevail." Now reason shows that affinity dependent on birth, shall prevail over affinity dependent on acceptance of donation.

CCLXXI.

MENU :—Though such as are called sons for that purpose (*to prevent a failure of obsequies*), but were produced from the manhood of others, belong in truth to the father from whose manhood they severally sprang, and to no other *except by a just fiction of law*.

The receptacle is inferior to the seed: this must be acknowledged.

Other sons, says VRĪHASPATI (CCXLVI), namely the sons of a wife, of an unmarried girl, and of a twice-married woman, shall *respectively* share a fifth, a sixth, and a seventh part. HÁRĪTA allots a twentieth part to the son by a twice-married woman (CCXIX). The *Brahme purāna* assigns to him the next share *after the son bought*; that is an eleventh part. SANC'HA and LIC'HITA allot one share to each of the rest, namely to the son by a twice-married woman, the son of an unmarried girl, and the son of concealed birth.

VRĪHASPATI mentions the son of a twice-married woman and others with disesteem (CCII). The reason of it is the adultery of their mothers.

SECT. VIII.—On the Son Given.

YĀJNYAWALCYA, having noticed six sons affiliated through a right either to the seed or to the receptacle, proceeds to mention six other sons adopted without any such claim; and first he describes the son given, because he holds pre-eminence among them.

CCLXXII.

YĀJNYAWALCYA :—That son whom his father, or his mother *with her husband's assent*, gives to another, shall be considered as a son given.

He is seventh in rank, according to YĀJNYAWALCYA; for he describes him immediately after noticing the sixth or son by a

twice-married woman. The particle (*vā*, or,) is in this place connective*, which is one of its senses, according to AMERA. Thus, if both his father and mother give him *to another person for adoption*, he truly becomes a son given: this supposes both his mother and father to be living; but if either of them be dead, the boy may be given by the survivor: however, should the man be deceased, the child must not be given by the woman without the assent of her husband *declared before his death*, as ordained by a special text.

CCLXXIII†.

VASISHT'HA:—A son formed of seminal fluids, and of blood, proceeds from his father and mother as an effect from its cause: both parents have power, *for just reasons*, to give, to sell, or to desert him; but let no man give or accept an only son, since he must remain to raise up a progeny for *the obsequies of ancestors*. Nor let a woman give or accept a son, unless with the assent of her lord. He who means to adopt a son, must assemble his kinsmen, give humble notice to the king; and then, having made an oblation to fire with words from the *Vēda*‡, in the midst of his dwelling house, he may receive, as his son by adoption, a boy nearly allied to him, or, *on failure of such*, even one remotely allied: but if doubt arise, let him treat the remote kinsman as a *Sūdra*. *The class* ought to be known, for through one son the adopter rescues many *ancestors*.

As an *only* son should not be given, so he should not be sold
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* This is disputed in the subsequent commentary. I have therefore translated the word in its common disjunctive sense, and supplied the same reservation as in the text of MENU, V. cclxxv. T.

† A part of this text has been already cited in Book II, Ch. IV, v. viii. T.

‡ With the mysterious words mentioned by MENU. Chapter II. v. lxxvi. T.

or deserted. Sale is a great offence, *even though made* in a season of calamity, when a maintenance cannot be provided; desertion is a great offence, because the family becomes thereby extinct. Thus the *Pracāsa*. Let no man accept *an only son*, because he should not do that whereby the family *of the natural father* becomes extinct: but this does not invalidate the adoption of such a son *actually given to him*. Some hold, that if an only son be given by a woman unauthorized *by her lord*, the donation is void, as if he had been given by a person who was insane or the like. "Let not a woman give a son without the assent of her lord:" the reason is, that a thing belonging to two persons ought not to be given by one without the assent of the other. If a donation of joint property, made by one parcener, be valid, why *should not the gift of a son, who belongs in common to his father and mother, be likewise good in law?* If single property, arising from the single efficient act of two persons, be attributed to both, then, should the thing be given away by either of them, that property being divested, the right of both is lost: but, in this case, a son being produced by distinct acts, one person furnishing seminal fluids, the other furnishing uterine blood, distinct property is created; and the gift made by one annuls his or her property only. It should not be objected, that the acts of procreation would be several, from the difference of time and persons. Although the acts be several, the procreation is one. Thus the reason why a son has property in the paternal estate, must be deduced from his birth being caused by his father; but the reason of a mother's property in her son must be deduced from his proceeding from her blood; and the reason of a father's property, from the child's proceeding from his seminal fluids. Although the same cause might here have been invariably assigned for the same effect, that must not be done *in the present instance, because these different causes* are established in conformity with the texts of Sages.

From the phrase "let not a woman give a son," as from the expression "let not a parcener give away joint property," does it not appear simply, that the gift ought not to be made, but the donation is not void? Then it should have been only said, "let not one give a son *without the assent of the other*;" for the husband ought not, by his sole act, to alienate property

held in common with his wife. The husband, therefore, has the primary right over his son, as appears from texts (CCLIII 1 and CCLII 4); but the wife, being dependent on him, has a secondary property, because the son was produced from the united operation of her blood *with the seminal juices of the father*, and because she bore the child in her womb. Hence gift made by a dependent person, without the assent of the principal owner, is void: and this is accurate, according to the opinion of those who contend for the right of the husband to the property of his wife (Book II, Chapter IV, v. LVI).

“Nor let a woman accept a son *without the assent of her lord*.”

If a son be accepted by a wife without the assent of her husband, her property in that child is valid, but not his performance of filial duties: he can neither possess the heritage, nor offer the *śrādd'ha* or the like, for it is shown that the adoption of a son is the act of the man; in no code of law is it found that adoption can be the act of the woman. It should not be argued, that the offspring of an unmarried girl and the rest become adoptive sons through the act of a woman. Although she produce the child through lust, his filiation is valid by the choice of the father, or by the authority of law, not by the choice of the woman. Thus the mention of gift, by the joint act of the father and mother, is intended to show the means of effecting a donation productive of no immoral consequence; but the gift made by the man alone is valid. However, the mother's claim is not annulled by his donation. But a child belonging to his natural mother, and to his adoptive father, is not truly considered in practice as a son given; the adopter should therefore obtain the assent of both parents.

The form of adoption is subjoined; “he who means to adopt a son, must assemble his kinsmen:” this is intended to show, that a son known by kinsmen *to have been adopted*, shall take the inheritance, and perform the *śrādd'ha* and the like; and they shall not molest him. The notice given to the king is intended for the same purpose. The oblation to fire with holy words from the *Veda* is an *unessential* part of the ceremony: even though it be defective, the adoption is *nevertheless* valid; for no one admits that the principal object is unattained if an *unessential* part be defective.

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Under the rule of TACSHA*, (“ what is *moral* or imperceptible, is not a part of that which is *physical* or perceptible,”) the oblation to fire with holy words, which is *relative to moral effects*, and must be deduced from the positive precept alone, is not an *unessential* part of the investiture of property, nor of the adoption of a son, who is physical, or perceived by the senses ; in like manner as the sacrifice on *consecrating* the site of a building is not an *unessential* part of the house, but an important act. The meaning is this : the rule of JAIMINI, (“ that which is unproductive is a part of that which is productive, and which it attends,”) shows, that an act which is associated with the principal act, or with one producing the effect chiefly considered, and which confirms the moral merit proceeding therefrom, but which does not itself produce the effect chiefly considered, is an *unessential* part : now a house or the like, being perceptible or *physical*, does not produce moral merit ; hence the definition of *unessential* part is inapplicable to the sacrifice performed on consecrating the site of a building ; but it is not *true*, that the wall cannot be erected, nor the house roofed, without a sacrifice to consecrate the ground. Is it therefore proper to affirm, that, without an oblation to fire with holy words from the *Vēda*, the moral benefit of adopting a son is not obtained ; but it is, if that oblation be duly made ; since the *simple* adoption of a son does not produce moral merit ?

If this be proposed, the answer is ; admitting this *oblation* to be an independent and principal act, like the sacrifice on consecrating the site of a house, still the adoption is not void if that *oblation* be omitted. But, in fact, moral merit is produced by the adoption of a son ; for it has no other effect. It is not by that adoption that the child becomes a son ; for he was already born *the son of another*.

If it be objected, that he is made the son of *the adopter* himself, that objection is answered by asking, does that affiliation to *the adopter* himself consist in the property vested in him, or is it attended with the power of taking the inheritance, and performing the *śrāddha* ? The first is not accurate ; for the property vested in the acceptor is universally admitted, even though the oblation

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* Among the rules of prosody and rhythmical recitation attributed to the fabulous serpent of hell called TACSHACA. T.

to fire with the mighty words * *earth, sky, heaven*, be omitted, as it is if tonsure and other ceremonies be neglected ; since the law, in that case, declares him a slave (CLXXXII). If the second be affirmed, it may be asked, does the power of performing the *śrāddha* signify ability to do acts relative to funeral obsequies and the like ? If it be performed by a traveller, although acceptance *for the purpose of adoption* had not taken place, his offer of the funeral cake does not become valid by his recital of the proper texts from the *Vēda*. If it be urged, *by way of reply*, that the deceased does not attain bliss by his recital of holy texts with the oblation of a funeral cake, the answer is, this reasoning is identical : for bliss, *it must be said*, is attained through an act performed by one who was qualified for it ; and the qualification consists in the performance of an act capable of effecting the attainment of bliss : these *propositions* reciprocate.

It may be argued, that the attainment of bliss through the act *of religion* performed by one who was qualified for it, must be thus particularly explained : *bliss is attained* through the act of religion performed by a son of the body, or by a son of the wife for a man who leaves no issue by himself begotten : it must be therefore affirmed, that, on failure of superior sons, bliss is attained through the act of religion performed by a son accepted *for adoption* : the right of performing acts capable of effecting the attainment of bliss, is therefore ascribed to this son in consequence of acceptance ; and the ascribing of that right to him arises from making that the object of the acceptance, and the support whereon rests the object specially contemplated in performing the sacrifice with mysterious words from the *Vēda*. To this argument the answer is, the acceptance and other *acts of adoption* being past before the attainment of bliss, a particular faculty, called moral merit, must be established †. It should not be

* Collectively called *Mahāvyaṁbrīti*. See MENU, Chapter II. v. 76.

† A particular *saṁscāra* called *apūrvā* : I have explained in former notes the idea which seems to be attached to *saṁscāra*, which I translate ‘faculty.’ *Apūrvā*, here translated merit, is, in a general sense, the relation between cause and effect not consecutive. According to what system *apūrvā* is considered as a *saṁscāra*, I know not : in dialecticks they are distinct qualities ; and the *Mīmāṁsū* does not admit *apūrvā* in a philosophical arrangement. However, the relation between a past event considered as a cause, and a remote event considered as its effect, may be

be argued, that, although acceptance be a past event, the past existence * of acceptance operates to produce the effect. Were it so, the past existence of an act always producing the consequence, there would be no argument to prove the moral relation of cause and effect ; or, admitting that the past existence of acceptance does produce the effect, it would be *physical or perceptible* : but this has been already answered.

Is not the oblation to fire with mysterious words no part of the adoption, but independent of it, and an attribute of him who is qualified *for performing obsequies* ? “ An act of religion performed by one who was duly qualified,” therefore signifies an act of religion performed by an adopted son, with a view to whom an oblation to fire with mysterious words has been made ; and thus, should the oblation to fire be omitted, the power of performing obsequies being consequently wanting, the affiliation is null. It should not be objected, that since it is burdensome to make both *acceptance for adoption and the oblation to fire* attributes of the person qualified *to perform obsequies*, acceptance alone should be considered as an attribute, *or requisite condition*. There exists no argument, by which it can be distinguished whether the acceptance, or the oblation to fire, should be considered as the requisite condition ; both ought therefore to be deemed attributes of him who is qualified to *perform obsequies*. Again ; since it is true in law, that affiliation is not *complete* by acceptance alone, therefore tonsure and other ceremonies performed by the adopter’s own family must be also affirmed to contribute *to affiliation* : in like manner, since there is no reason for selecting one in preference to the other, the oblation to fire with holy words from the *Vêda* should also be considered as contributing *to adoption*. But the notice to kinsmen, and other formalities appearing to be intended for an evident *or popular* end, an imperceptible *or moral* purpose ought not to be attributed to them. Is it not thus proved, that adoption is not valid, unless

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be called a faculty or power to produce that effect, if there be any subject to which the faculty can be attributed : in this view, the son has, in consequence of adoption, the faculty of procuring bliss for his father. T.

* It has been already explained, that, according to one system of philosophy, the cessation or past existence of an event is considered as positive, and subsisting, for the purpose of connecting with it another event considered as its effect. T.

an oblation to fire with holy words from the *Vēda* be duly performed?

When this argument is proposed, the answer is ; yet notice to the king and convocation of kinsmen are necessary for a *seen or secular* purpose, namely, that the adopter's brothers and the rest may know the name and class of the child, and so forth, after thoroughly investigating all circumstances : for this reason (*the purpose not being indispensable*), affiliation is in some instances valid, even without this *unessential* part of the ceremony. In like manner, should the oblation to fire be partly omitted in consequence of inability to complete it, the adoption is sometimes good in law, as marriage and the like are valid in similar circumstances.

The meaning of that observation of VÁCHESPATI BHATTÁCHÁRYA may be thus explained : if the intention of the party be only declared in this form, “ I give you this damsel,” she continues a maiden, and the accepter does not become her husband ; *on the contrary*, she may be given to another, as a girl called ĪRĪT'HÁ was bestowed by the father of VASUDÉVA on CUNTIBHÓJA, and afterwards given by him to PÁNDU : but if the intention of the party be thus expressed, “ I give this damsel to be *thy* wife,” she becomes the wife of the accepter, and cannot with propriety be given to another ; this alone constitutes marriage : so, if a gift be made declaratory of property only, then property alone is *conferred*, as in the case of a slave ; but if the *declared* intention be expressed in these words, “ I give him to you as a son,” and if *the accepter's intention* be thus expressed, “ I take him as a son,” he becomes a son ; nothing else is required.

Since the *Cálicá purána* declares filiation null, if tonsure and other ceremonies, preceded by the enunciation of the family name, be omitted (CLXXXII), this is necessary to assist adoption. But since no one has declared that filiation is null if the oblation to fire with holy words from the *Vēda* be omitted, the validity of adoption by gift and acceptance only, without such an oblation, is fully proved by reasoning. However, as a son is produced from fecundation without the recital of holy texts from the *Vēda*, but a son is perfected by the recital of them (for YÁJNYAWALCYA declares, “ sin, arising from the seed and the womb,

womb, is expiated *by the ceremony of tonsure, and by those which precede it*);” so, even without an oblation to fire sanctified by holy words from the *Véda*, adoption, the object of that act of the will called acceptance, is indeed valid, but no special perfection arises. On the other hand, tonsure and other ceremonies, preceded by announcing the family name of the natural father, having been *already* performed, the claim to the original family cannot be forfeited; how then can the child become son of another? On this and similar reasoning is founded the text of the *Cálicá purána*, which we revere as the commandment of our master. Without minute investigation, it is admitted, that the adoption of a boy, for whom tonsure and other ceremonies had been *already* performed after announcing the family name of his natural father, is void.

It should be here considered, that, if the *adoptive* father die after taking *as a son a boy* under the age of five years, but tonsure and other ceremonies have not been performed, the adoption is nevertheless valid; hence the celebration of these ceremonies, with the family name of the *adopter* himself, ought not to be considered as contributing *to the adoption*; but the circumstance of tonsure not having been performed with the family name of the natural father *should be so considered*. Whence is this deduced? From the text of the *Cálicá purána* (CLXXXII 1), which shows, that the circumstance of tonsure and other ceremonies not having been performed with the family name of the natural father, does contribute *to the validity of adoption*. It should not be argued, that, since there are no grounds of selection, both ought to be considered as contributing *thereto*. The purpose being answered by one, it would be burdensome to establish that both contribute to adoption; and there is no occasion for so doing. Nor should it be argued, that occasion arises from the text last quoted (CLXXXII 1), which invalidates the adoption of a son given, for whom tonsure and other ceremonies had been previously performed with the family name of his natural father, and are afterwards performed with the family name of the adopter; and from the other text (CLXXXII 2), which declares adoption void unless tonsure and other ceremonies be performed with the family name of the adopter: there is consequently separate occasion for both, and both ought therefore to be

be affirmed necessary concomitants *of adoption*. The obvious sense refers to one only ; for the initiation being completed by the ceremony of tonsure already performed, the child is not initiated under the family name of the adopter, but his initiation under the family name of his natural father remains in full force : thus his adoption may be invalidated by a single text. It should not be objected, that, were it so, there would be no ground of preference to determine which shall be affirmed to contribute to adoption. Since his filiation, prior to the ceremony of tonsure performed under the name of the adopter's own family, must be acknowledged, it must be a requisite concomitant of adoption, that another family name have not been previously used : for, if he did not become a son before the ceremony of tonsure be performed, how could the father announce the triple set of oblations*, which is a part of that rite, *in these words*, for the “ fake “ of commencing the ceremony of tonsure for my son, belonging to the original family named so and so ?” He would not then be son *of the adopter*, nor descendant of the ancient Sage who is the source of the family. Neither does the triple set of oblations alone constitute the ceremony of tonsure, for the family name would be changed by the performance of that alone. It should not be argued that the sense of the word tonsure should be extended to this *śrādd'ha*, which is a part of the ceremony ; else the text would be inaccurate, since the family name is not announced during tonsure, which is the principal object of the ceremony. Were it so, if the triple set of oblations only had been made under the name of the natural father, and tonsure had casually remained unperformed, a boy, for whom it was afterwards performed under the family name of the adopter, by whom he was taken under the age of five years, would not be a given son duly adopted. Say not, that is admissible. The law does not show adoption to be void, when the principal part *of this ceremony* had not been *previously* performed. It should not be said, that the word tonsure must extend to that part of the ceremony which effects the purpose, but that the *śrādd'ha*, not effecting the purpose consisting in tonsure, is not included in that

* *Nāndimuc'ha śrādd'ha* : but the balls or funeral cakes are not usually offered in this *śrādd'ha* : the oblations consist of barley, water, and *cus'a* grass. T.

that term. There exists no argument on which this can be established.

The adoption of a child taken at the age of five years, but for whom tonsure and other ceremonies were afterwards performed under the family name of his natural father, would be nevertheless valid : for the ceremony of tonsure performed under the family name of his natural father is void, because he did not then belong to that family ; and because the ceremony is performed by one who had no right to do so, since he truly became son of the adopter, and certainly belonged to his family, not having being already initiated under the family name of his natural father when the adoption took place. It should not be objected, that, were it so, the text of the *Cálicá purána* (CLXXXII 1) would be unmeaning. That text is only intended to invalidate the adoption of a boy for whom the ceremony of tonsure had been performed within the third year, and who is *afterwards* accepted *for adoption* within his fifth year. In this case, whose son does he become ? He becomes the slave of the person who accepted him *for adoption*.

On this subject it is said, the inference ought to be deemed admissible ; for the ceremony of tonsure *thus performed* is void, and a repetition of it is needed : but that cannot take place, since there is no person capable of performing it, because he is not truly son of either ; for you must affirm, that, by the relinquishment of the giver, the boy ceased to be his son, or to belong to his family, and that his affiliation is void. It should not be objected, that the text of the *Cálicá purána* (CLXXXII 2) would be unmeaning. It is intended to confirm the sense of the preceding verse (CLXXXII 1). A boy therefore, being accepted under the age of five years, is in law a true son of the adopter, even though the ceremony of tonsure have not been performed. Accordingly, if his filiation were incomplete until his marriage, which is included in the term “ and the like ” (CLXXXII 2), he might espouse a damsel related to the adopter, within the degree of a *śapinda* ; and the affiliation of one whose marriage happens not to take place, would be void ; and tonsure and other ceremonies for men of the servile class, being optional, if these be not performed, the adoption would be invalid : these and other difficulties are obviated ; for the implied object is to except *one*
for

for whom the ceremony of tonsure has been performed under the family name of the natural father.

It should be here remarked, that no law is found expressing that a son shall not be adopted by one who has not contracted a marriage; nor any law, that a boy, *known by his family name to be* of the same primitive stock, shall not be adopted. But, in fact, if the adopter wilfully omit any of the ceremonies, either that tonsure, or any other which is ordained for his class, the boy becomes a slave; if the adopter die, while disposed to perform those ceremonies on a day subsequent to acceptance, the adoption is nevertheless valid: that disposition must be understood to be an intention *which may be expressed in these words*, “I will perform them.” This should be admitted as a rational interpretation; else, his affiliation being imperfect when such an adopter died, the estate would be taken by a brother’s son; afterwards, when the affiliation was perfected by tonsure subsequently performed *by the kinsmen*, the son would be destitute of property; or, being then unconcerned with mourning, he might himself cause the ceremony of tonsure to be performed, and *thus becoming a true son*, present fire *to the funeral pile of the deceased*; which would be inconsistent with common sense.

In the double set of oblations, to whom shall he offer the funeral cake, with which he utters the words “maternal grandfather?” On this some remark, that to say he shall offer it to the father of her with whom his adoptive father is married, would not be pertinent; for, a son adopted by one who had no wife, would have no maternal grandfather’s line. It should not be argued, that one who has no wife, being *consequently* excluded from the order of a householder, cannot properly adopt a son, this being an act mentioned when treating of the order of a house-keeper or married man. There is no argument *to support such an induction*. Accordingly, it is recorded in the *Bhārata*, that PÁNDU, having gone to the forest* with his wife, adopted sons begotten on her *by strangers*; and it is recorded, that VYÁSA and others, who had contracted no marriages, nevertheless obtained sons, namely SUCADÉVA and others. He who happens to have no wife, (whether he have contracted no marriage, or his wife have died or be forsaken by him,) either has not completed the

* And having consequently entered into the order of devotion. T.

the ceremonies which perfect *twice-born men*, or belongs to no order; but it is contrary to common sense that, although the form of adopting a son given have been observed, the adoption should be void.

If a son be adopted by a man married to two wives, he would have two maternal grandfathers, and *would claim as maternal ancestry* both their lines of forefathers. This seeming difficulty is thus reconciled: although there be two sets of maternal ancestors, they should be jointly considered as manes of ancestors, and they should be thus named in performing the *śrāddha*, “such a one maternal grandfather, sprung from such a primitive stock! such a one maternal grandfather, sprung from such a primitive stock! to thee (*to each of you*) this funeral cake is offered,” and so forth, as is done by the son of the wife considered as a son of two fathers. Thus some *reconcile the difficulty*.

Males only need sons to relieve them from the debt due to ancestors. Accordingly, the sage MANDAPĀLA, desiring admission to a region of bliss, but repulsed by the guards, who watch the abode of progenitors, because he had no male issue, accepted a bird for his consort, that he might earlier obtain a son; and it is recorded in the *Mahābhārata* and other works, that JARATCĀRU, RUCHI, and other males, have taken wives for the sake of obtaining male issue, but *it is no-where said* that a woman *has taken a husband* for that purpose. Accordingly, in the double set of oblations, it is indispensably necessary that the son should perform the *śrāddha* for the paternal line, not for the line of his maternal grandfather: but it is simply reprehensible in one who performs the *śrāddha* for the paternal ancestors, not to perform it also for the maternal grandfather and his progenitors. Consequently, since the *śrāddha* may be performed without noticing the maternal grandfather's line in a subordinate double set of oblations and the like, the *śrāddha* for the maternal ancestors is not requisite to the completion of the obsequies performed in the dark fortnight of *Aświna*. This observation of RAGHUNANDANA and others is accurate. Accordingly a widow, though she may perform acts of religion without consent previously declared by her deceased lord, cannot, *without such consent*, adopt a son given; for the text of VASISHT'HA expresses, “let not a woman give or accept a son,” &c. (CCLXXIII). But, if her husband assented,

tented, she may adopt a son given, as a son of the wife *is raised up to a husband by his consent*; else it should have been expressed in the law, “he shall not be the son of her husband unless *adopted* with the assent of her lord, but shall be her own son to perform her obsequies and take her inheritance.” A son given is therefore the child, not of his *adoptive* mother, but of his adoptive father only.

Then, what occasion is there for any relinquishment on the part of the natural mother? There is none according to the *Retnācara*. That opinion will be forthwith explained. But in requiring joint relinquishment on the part of both *parents*, the texts of Sages are liable to no reproach. The reason is, that it is not admitted that one shall be father of a son given, and the wife of another be his mother. Some indeed admit that situation of a son illegally begotten, considering him as one of the various sons by twice-married women; but *SÚLAPÁNI* and the rest do not admit it. Consequently, with the followers of the *Yajurveda*, a son given shall perform a *śrāddha* to the paternal grandmother and the rest instead of a maternal line, like a man whose mother became an outcast: but he is entitled to take the wealth and perform the obsequies of his adoptive mother, like the son of a contemporary wife and the rest. This, *say some lawyers*, is demonstrated. But that is wrong; for *the author of the Párijāta*, UDAYACARA, CHANDÉSWARA, and others, who follow not the dictates of predecessors, forbid the raising up a son of the wife and the like if there be a son by a contemporary wife, and virtually admit the adoption of a son given on failure of issue by contemporary wives, provided authority have been received from the husband.

But the maternal grandfather's line is the paternal ancestry of the natural mother, as observed by VÁCHESPATI BHATTÁCHÁRYA, from an expression found in the *‘Śrāddha Chintāmeni*, “the maternal grandfather's line is common to all.” In that remark he delivers this opinion: by the father's relinquishment, his funeral rites, and the son's claim to his estate and family, are annulled; by the mother's relinquishment also, the son's claim to her estate and family is cancelled; but the father of the natural mother not having relinquished the child, how can the boy's claim to perform his *śrāddha* and take his inheritance be annulled? The *śrāddha* for a maternal grandfather is not a consequence of

of his property, for he has no property in his daughter's son; it is grounded on the birth of the child from a daughter procreated by him, and that descent is not in this case lost. If it be asked, *since* his descent from his father and mother likewise is not lost, shall he not therefore perform the *'rádd'ha* for them also? *the answer is*, the right of performing obsequies and the like for a father and mother does not arise from birth alone, but from the relation of a son to his parent: if he be forsaken, although the descent remain the same, the relation of parent and child does not subsist, for he is not numbered among sons; and although the definition of a son born in lawful wedlock be applicable, he must be excepted under the authority of the law, since those who are technically called sons are alone qualified to perform the *'rádd'ha* and the like.

Still shall he not take the inheritance and perform the obsequies of the natural father of his natural father; for grandsons, not being technically so named like sons, "born from a son" is the definition of a grandson in the male line? One born from a son is not *the meaning of* "grandson in the male line," but son's son is *the meaning of that term*; else the adopted son of a son would not be a grandson: and, if that inference were deemed admissible, it would be incompatible with the text of the *Brahme purána*.

CCLXXIV.

Brahme purána:—They claim *descent* from a different primitive stock, are separate in the oblation of funeral cakes, and propagate a distinct race*.

It cannot be *true*, that he who is the son of a son, is not a grandson in the male line: and it is proper to affirm, that he continues the race of the paternal grandfather. May not the phrase "propagate a distinct race," signify "continue the lineage of the father," not "continue that of the paternal grandfather?" It is inconsistent with common sense to say, that a line of descendants, uninterrupted like the stream of the Ganges, is the race

* See the remainder of the text at V. cclxxvii.

race of the father alone, not of the paternal grandfather. Or, if that were deemed admissible, the expression "claiming descent from a different primitive stock," would be inaccurate; for it signifies claiming descent from that sage (CAŚYAPA or another), who is the founder of the family (or described in the *Vēda* as the source of descent) of a different person from the natural father, meaning of course the adoptive parent: consequently, if a son, born in a family claiming descent from 'SĀNDILYA, be adopted into one which derives its origin from CAŚYAPA, but do not become the grandson of the adopter's father, CAŚYAPA would not be the source of his descent. Again; what would be the meaning of "separate in the oblation of funeral cakes?" It does not signify bound to offer a funeral cake to a separate person, that is, to one different from the natural parent; for, were it so, all persons would be "separate in the oblation of funeral cakes," since they present such offerings to their mothers and to their paternal and maternal grandfathers and the rest. Therefore "funeral cakes" must here denote relation within the degree of a *śapinda*; and the term above quoted signifies, that the relation by the funeral cake is different from that which existed through the ancestry of the natural father. Hence it is deduced, that, omitting the succession of natural progenitors, the funeral cake shall be offered, in the double set of oblations, to the ancestry of the adoptive father. Thus it likewise appears, that the paternal grandfather enjoys the funeral cake offered by that *adopted son*. Or the word *pinda* may signify the set of ancestors who have reached the abode of progenitors. Still relation by the funeral cake virtually appears *to be the sense of the word*; for the derivation of the term *prithac pinda* exhibits as its sense, "those whose sets of ancestors are distinct." If a brother's son be adopted, still, since he enters the family of the adopter, the set of ancestors is distinct, as a cow and sheep are different from a cow and goat.

It should not be objected, how can the term maternal grandfather be properly used, since it signifies mother's father; but he (the natural grandfather) is not a mother's father, since his daughter is no longer mother of the *adopted son*? Although she be not then considered as such, yet, since she was mother of the child at some *former* time, the relation of her father is not lost; the word

mātrī,

mātri, from which the term *mātāmaha*, or maternal grandfather, is derived, signifies natural mother only ; and although such relation cease by her death, still the word mother is used in performing a *śrāddha*.

The father's right in his son, who is given away after the death of the mother, is devested by his donation ; but, since she has made no gift, shall not the son perform the *śrāddha* in consequence of her subsisting right ? It should not be answered, that, since the text of VASISHT'HA describes gift as the act of both (CCLXXIII), a son whose mother is dead, ought not to be given ; else a son whose father is dead might in like manner be given away by the mother. Since a subsequent phrase, " let not a woman give or accept a son, &c." specially forbids her giving away a son without the assent of her lord, it is thereby intimated, that if the wife be *living*, her co-operation is required for a donation made by the husband ; but if she be not *living*, there is no objection to a gift made by the husband singly. When this argument is proposed, the answer is, that inference is admissible. But, in fact, a son whose mother is dead ought not to be given away ; it contradicts common sense that one should be father and the wife of another be mother of an adopted son. If gift be founded on the co-operation of the mother, then such a contradiction to common sense does exist in this case ; for the mother's gift of the son becomes necessary. Thus some expound the law.

But CHANDÉSWARA explains the phrase " both parents (*the father and mother*) have power to give a son," the father has *that* power, and the mother has *that* power ; for it is a rule that in the apposition called *dwandwa*, each term, whether expressed first or last, is severally taken and intended. The lawgiver also forbids the attempt of a mother to make a gift without the consent of the father : " nor let a woman give or accept a son unless with the assent of her lord." But there is this difference : if the father be *living*, a mother can only make a gift with his assent ; but if he be not *living*, she may do so even without his *previous* consent.

According to this opinion, the husband's gift of a son is valid without his wife's consent, even during her life-time ; but the wife's property in her son is not thereby devested. If this be affirmed, the answer is, what difficulty is there ? It may, however, be questioned, how a son given by a widow without authority from her deceased husband, can become the son of a male.

But others deduce from the phrase “both parents have power, &c.” that gift is the several act of each of them: but a donation by a woman is there forbidden; “let not a woman give or accept a son unless with the assent of her lord.” It should not be objected that the word mother in the expression “both parents (the father and the mother) have power, &c.” would be unmeaning. It shows that she may confer an equal right with her own. But in this case, even though she transfer such right, the affiliation is not valid; for the adoption of a son consists in *the acquisition of an equal right with the man’s*. It should not be argued that adoption is valid even in the case of a gift made by a widow, because she is then independent of her husband’s death; and the acceptor acquires property in the son as it were by occupancy, since there is no *existing* claimant of that right. Still she cannot properly confer an equal right with that of her lord; and the claim to a son, acquired by occupancy, is not acknowledged; else, property by occupancy in any child whose father and mother are deceased being admitted, he would become in law the adopted son of a *guardian*. It appears that a woman is dependent even during her widowhood, since a text (CCLXXVII 2) requires her to preserve undefiled the bed of her lord.

Again; a son given by his father, even though his mother be dead, is in law a true son given. If the donation made by a living mother be disapproved, or if she be dead, does not a son given, though the gift be valid according to this opinion, still belong to his mother; for the property of one cannot justly be annulled by the gift of another? It should not be answered, that, wives being dependent on their husbands, the property of the wife is truly divested by the will of the husband; for this constitutes dependence or subjection. Will and divestiture of property co-operating for the same end, become the *joint* causes of the effect: and there is no difficulty in affirming, that the power of making gifts and the like, controuled by the will of another, constitutes dependence or subjection. Then this son given would be competent to perform obsequies and the like for his deceased natural mother? That is admissible.

CCLXXV.

MENU:—He whom his father, or mother *with her husband’s*

husband's assent, gives to another as his son, provided that the donee have no issue, if the boy be of the same class and affectionately disposed, is considered as a son given, *the gift being confirmed by pouring water.*

The particle *vā*, “or,” occurring in the text of YÁJNYAWALCYA (CCLXXII), in this text of MENU, and in that of VISHNU (CLXXXV), does it not appear that each of them may severally make the gift? It should not be asserted that the particle *vā* is in this place connective. Were it so, the expression of VASISHT'HA, “nor let a woman give or accept a son,” would be unmeaning; the law shows that gift should be the joint act of both parents. It should not be argued that this very maxim is confirmed by the expression “nor let a woman give or accept a son;” else it might be understood that each may transfer his own right. Were such the design, it would be said, “let not one singly give a son,” to prevent a donation made by the husband alone: since the text which describes him who is called a son rejected (CCXCI), admits the filiation of a boy forsaken either by his father or his mother, and adopted by a stranger, it might be supposed that one given by either of them became *in law* a son given. It must therefore be affirmed, that the property of both departs if the boy be given by either of them; else, how could a boy forsaken by his mother become *in law* a son rejected?

That inference is denied; for the seeming difficulty is removed if “given by either of them” be explained given by the father, or by the mother with her husband's assent. It should not be objected, that there is no argument on which this induction can be established. The unreasonableness of the ownership of one, being forfeited by the gift of another, is a *sufficient* argument. Admitting that adoption is *in one case* void, because the father's property is not lost by the gift of a mother unauthorized *by her husband*, still the property of the mother, who is subject to the father's power, being divested by his gift, would not her son be incompetent to perform her obsequies and the like? If the property of any one be forfeited by the gift of him to whose power he is subject, then the property of the son in that which was obtained

through the indulgence of the father would be divested by the father's *subsequent* donation. Therefore the property of the giver alone is divested by gift: the adoption of a son given is valid by the donation of the father; but, given by the mother unauthorized by her husband, it is void. Such is the induction. But, since it is not a fit practice for a son given to perform the obsequies of his former mother, it is proper to take for adoption a boy whose mother is living, and who is given both by her and by her husband. This brief statement may suffice.

What some affirm to be CHANDÉSWARA'S notion is questionable. *They hold*, that if an orphan give himself, he is a son selfgiven; but if one whose mother is living, and who is bestowed by her, give himself, he is *in law* a son given, as suggested by the particle (*vā*, "or") in the text of YÁJNYAWALKYA (CCLXXII). That the boy's gift of himself confers a right equal to his father's, appears from the definition of a son selfgiven: and this is reasonable, *say these lawyers*; for, after the death of the father, his whole wealth becomes the property of the son, and a donee has property in that which is given to him by that heir; so, after the death of the father, the son has a proprietary right over himself, and that right is transferred to the donee by his gift: hence a boy whose father and mother are living, but who is forsaken by them, becomes by his own donation a son selfgiven. Would not a boy given by his mother, after the death of the father, thus become a son selfgiven? That is admissible, *say these lawyers*: but, in fact, a right equal to that of the father is conferred by the son's donation; and by the mother's gift every claim is cancelled. That opinion is questionable; for adoption consists in *the acquisition of* a right equal to that of the father: if that be effected by the boy's own donation, he is a son selfgiven; if it be effected by the father's gift, the boy is a son given: such is the distinction. But if a boy be given by his widowed mother, a right equal to that of the father is not effected by her donation, but by the boy's gift of himself; he ought therefore to be considered as a son selfgiven. It should be here remarked, that, after the death of the father, his son's son, whose own father is dead, has a title to other paternal wealth; but is not acknowledged to have any right over the son, for no such right does exist over a son and a wife: and this is reasonable.

reasonable. Thus much, say the lawyers, *whose opinion was first cited*, has been mentioned by way of illustration.

CULLÚCABHATTA holds that the father and mother should make the gift with mutual consent. The reasoning on which this is grounded must be fought. But in fact that alone is proper. VÁCHESPATI MISRA likewise affirms, that adoption is only valid if the gift be jointly made by both parents.

The mother being subject to the power of her husband, her property is divested by his gift; but it is not so in the case of wealth obtained through favour or the like, because there is no subjection in respect of such property. Thus, if a son be adopted by the husband, the wife has a secondary claim to that child, because property is common to the married pair (CCCCXV); and the line of the maternal grandfather is the ancestry of the adopter's father-in-law. This opinion authors deduce from the gloss delivered by CHANDÉSWARA on a text cited in a former Book (Book III, Chap. I, v. LII 1), and from the gloss of CULLÚCABHATTA on the subsequent text (Book III, Chap. I, v. LII 2.)

The *Retnácara* contains the following gloss on the text of VASISHT'HA (CCLXXIII): *he who means to adopt a son* must assemble his kinsmen, that the *boy adopted as a son* given may *thereafter* obtain a share. Assembling his own heirs, he may receive, *as his son by adoption*, a boy not remotely allied to him, that is, nearly allied to him, such as the son of his own maternal uncle or the like: this is intended for the *better* ascertainment of the boy's name and class. On failure of *near* kinsmen, he may take one not nearly allied to him; for the name and primitive stock may be ascertained by other positive proof: the particle *éva* here bears the sense of "even." But if doubt arise, that is, if it be doubted by one who adopts a remote kinsman whether he belong to the sacerdotal class or the like, let him treat the boy like a son by a *Súdrá*, employing him only in the business of the house. "*For* through one he rescues many:" because, through one son, the adopter saves many ancestors, therefore he should take for adoption a boy whose class and family are not dubious.

VÁCHESPATI MISRA does not connect the terms "nor let a woman accept a son," with the words "unless with the assent of her lord;" because, even though she have the consent of her husband, a woman cannot adopt a son *given*; for she can make

no adoption since she is debarred from presenting an oblation to fire with the mysterious words from the *Vēda*, which oblation is a part of the ceremony. That is not the opinion of RAGHUNANDANA, VÁCHESPATI BHATTÁCHÁRYA, and the rest: it is not reasonable that the principal act should be unperformed because an *unessential* part is prevented: since a woman could not make the *requisite* vow*, (for she is prevented from reciting it in holy strains,) she would be incapable of performing a mere voluntary rite. Like the consecration and dismissal of a bull, the adoption of a son may be completed by an oblation to fire performed through the intervention of a *Bráhmaṇa*†. The separation of the terms “nor let a woman give or accept a son,” from the words “unless with the assent of her lord‡,” is thus set aside.

It should be remarked, that, according to VÁCHESPATI MISRA, if a boy who is given by his father and mother consent to the donation, his adoption as a son given is valid; but an only son must not be given, even though he do consent. *No son must be given away against his will*; else the mention of “assent of persons interested” (Book II, Chap. IV, v. II) would be unmeaning. That opinion is disputable; for a boy not older than five years, being ignorant of civil affairs, cannot discriminate between assent and dissent. As for what authors affirm as the opinion of the commentator, that a father must give a son who consents to it, but, if he be an only son, the father shall not give him even though he do consent; that is also questionable: for, since he is not his own master, there is no argument to prove that one who does consent must be given.

The ceremonial of adoption is *now* subjoined. Having given humble notice to the king, and, after making an oblation to fire with holy words from the *Vēda*, giving gold and winter-corn in conformity with usage, let the adopter, ascertaining his name, family and class, in the presence of kinsmen, receive a boy for whom the ceremony of tonsure and the like has not been performed,

* *Saṅkalpa*; a vow or declaration with which a solemn rite is begun. T.

† To this argument the *Mait'hila* school reply, that the dismissal of a bull cannot be undertaken by a woman. T.

‡ According to VÁCHESPATI MISRA the text should be thus interpreted: “nor let a woman give a son unless with the assent of her lord, nor accept one in any circumstances.” T.

formed, whose age does not exceed five years, and who is given by his father or by his mother with the assent of her husband, provided that they have another son. Let him next perform the sacrifice on adopting a boy, (*putrēṣṭi*.) This *putrēṣṭi* sacrifice, say experienced lawyers, must be performed by one who maintains a consecrated fire; but, by him who does not maintain such a fire, an oblation must be made with the mysterious words from the *Vēda*, as directed by VASISHT'HA. In fact, the oblation to fire with holy words from the *Vēda*, which is directed by VASISHT'HA, should precede adoption; the *putrēṣṭi* sacrifice, ordained in the *Cālicā purāna*, should be performed after adoption: this appears from the form of expression used in the texts ("having made an oblation, he may receive a son;" and, "having taken a boy five years old, he should perform a sacrifice*.") At present some omit, through laziness, the sacrifice called *putrēṣṭi*, in the same manner that the ceremony of combing a wife's tresses is not now practised. Thus authors direct the ceremonial of adoption.

In the *Cālicā purāna*, the texts above cited (CLXXXII and CLXXXIII) are delivered, after premising the son of the body, the son of the wife, the son given, and the son made. "Any other is called a slave" (CLXXXII 2): from this it appears that the claim of the natural father to a son taken for adoption is annulled. "Sons given and the rest" (*ibid*); the term "and the rest," comprehends sons made by adoption and the like. Hence these must also be adopted under the age of five years; and the ceremony of tonsure and the like must not have been performed under the family name of the natural father; else the boy would be called a slave.

VÁCHESPATI BHATTÁCHÁRYA holds, that, since the text of the *Cālicā purāna* declares void the adoption of a boy for whom the ceremony of tonsure has been performed under the family name of the natural father, the adoption of a boy as a son given, who sprung from the same primitive stock with the adopter, is consequently invalid. Others do not respect that opinion; and they affirm, that the text (CLXXXII 1) implies a prohibition against adopting one for whom the ceremony of tonsure has been performed: but there is no harm in taking the son of a near kinsman,

* According to this gloss, "first," which occurs in the text (CLXXXIII), must be explained 'first subsequent act, immediately after receiving the boy.' T.

kinsman, and *afterwards* performing the ceremony of tonsure and the like. Their meaning is this ; “ under the family name,” intends the declaration of that name ; it must be also understood, that the natural father, *who has performed the ceremony*, was competent to do so ; consequently, the family name of the father being only once proclaimed, (for both do not perform the ceremony,) the adoption *of a boy who has not been shorn* is not void.

A man dies after authorizing his wife to adopt a son ; the ceremony of tonsure and the rest are subsequently performed by another person sprung from the same original stock with the natural father ; still the adoption would be valid, because the ceremony of tonsure was not performed by a natural father competent to do so. It should not be objected, that adoption is void if the triple set of oblations be offered, beginning with the natural father, and proceeding regularly *to the several ancestors* ; and the question of competency should not be examined. If the *śrāddha* were casually omitted, there would be no defect in the adoption. On this point it is said the text cited (CLXXXII 1) is intended to except the performance of the ceremony of tonsure previous to the acceptance *of a son given* ; for, after the adoption, the ceremony of tonsure performed by the natural father is void. It should not be objected, that the word tonsure does not signify the initiating ceremony, but the act of shaving the head and so forth : the word tonsure may with ease be made to signify that particular ceremony. It should not be objected, that, in such a case *as here supposed*, the validity of adoption is denied by the letter of the law. There is no argument to support that opinion ; for it has been already noticed, that acceptance in a certain form is the efficient cause of filiation. If a natural father, having given away his son, perform the initiating ceremony under his own family name, through mistake or through knavery, then, although the adoption be valid according to the system of law, the text (CLXXXII 2) declares void the relation of the son to the adopter, who ignorantly omits to perform the ceremony of tonsure afresh, because it had been already performed. Such is the opinion of other lawyers.

Some hold that the mere act of shaving the head being *the principal part of the ceremony*, and the recital of holy texts by a competent person, and other formalities, being *unessential* parts of it, the ceremony of tonsure is complete by the act of shaving the head, done by the natural father, although *unessential* parts of the ceremony

ceremony fail. Then the right of tonsure, though performed through mistake by one who supposed the legitimate son of another to be his own, would be valid? That is admissible, say these authors. But their opinion is erroneous; for, the act of shaving the head being suggested by a precept not scriptural*, the performance would be useless; but the person to whom the precept relates must be chiefly considered, since it is ordained that the ceremony of shaving the head shall be performed by a competent person. It should not be argued, that this is a cogent precept, like that for approaching a wife in due season. Since compliance with a cogent precept has no reward, the important object of *initiating the boy into* the sacerdotal class would be unattained: or, admitting it a cogent precept in respect of the ceremony of tonsure, still there can be no such cogency in the ceremony of feeding the child with rice; for, since the body cannot be supported without nourishment, the cogency could only be deduced from a maxim not scriptural. Hence the performance of the ceremony by a competent person being required in the case of one solemn rite, the same must be established in the case of another. VÁCHESPATI BHATTÁCHÁRYA observes, in the new *Dwaita nirneya*†, that the ceremony of feeding the child with rice, being performed by a competent person, becomes *a step towards perfection or initiation*. Consequently, from the expression “under the family name of the father,” is deduced the invalidity of the adoption of a boy for whom the ceremony of tonsure has been performed in a mode which shows that he shares the primitive origin of his natural father, or which shows that he continues the race of his natural father, for the terms “family distinguished by a name indicative of the primitive stock,” may signify race or lineage. AMERA exhibits both terms (*gōtra* and *vanśa*) as signifying family. That a boy for whom the ceremony of tonsure had been performed by his natural father, with the omission of some *unessential* part, such as the treble set of oblations or the like, may be legally adopted, is thus disproved; and the adoption of a boy sprung from the same original stock is thus shown to be valid: the whole is consistent. At

* Precepts are distinguished into such as are drawn from scripture, and such as are drawn from other sources. These again admit other subdivisions mentioned in a former note. T.

† The old *Dwaita nirneya* was composed by VACHESPATI MISRA. T.

At present, as some lawyers affirm, the adoption of a son accepted under the age of five years, by men of mixed classes, who do not practise the ceremony of tonsure and the like, is valid, even though the shaving of the head be not in any mode effected.

The adoption of a brother's son is valid. To this some object that, since the text of MENU (CCLXXVI) describes a nephew as son *of his childless uncle*, a further adoption as a son given is not valid; their own legitimate offspring being given by the father and mother to each other, does not thereby become a son given.

CCLXXVI.

MENU:—If, among several brothers of the whole blood, one have a son born, MENU pronounces them all fathers of a male child by means of that son.

The objection is ill founded; for CHANDÉSWARA, CULLÚ-CABHATTA, UDAYACARA, and the *Pārijāta*, explain the text, 'sons given and the rest should not be adopted if there be a brother's son.' No one has said that, if a brother's son be adopted through mistake, the adoption is void. As a daughter should not be appointed to raise up male issue, if there be a son begotten in lawful wedlock, but the appointment if made is valid; so, in the present case, or *if a nephew be adopted, the act is good in law*. Admitting the validity of the adoption, shall not another nephew have an equal or *at least* an unequal share, since he also is *considered as a son*? No; for, YÁJNYAWALCYA pronouncing a nephew to be unentitled to participation if there be a brother, the nephew must of course be considered as inferior to a son given or the like. It should not be argued, that, if no son begotten in lawful wedlock, nor wife, daughter, father and the rest, be living, the brother is entitled *to the succession*, and, on failure of him, the nephew and other *heirs*, such as sons given and the rest, have an equal or unequal title, according to the strength of their claims. The term "sons" being used in the plural number in a text formerly cited (CCXXIII), it appears that sons of every description are entitled to the succession, although a brother be *left*. Accordingly

cordingly CULLÚCABHATTA observes, neither uterine brothers nor parents, but, on failure of sons begotten in lawful wedlock, the son of a wife, and other secondary sons, are heirs to the *deceased* father; this is meant, for the right of the son begotten in lawful wedlock is deduced from another text (CCXV): but of one who leaves no son properly or improperly so called, nor a wife, nor a daughter, the father is heir; and, on failure of those and of the mother, the brothers shall take the inheritance. Why then is he called a son? Because he delivers *the uncle* from the hell called *put*; else it would be improper to affirm, that sons given and the rest should not be adopted, if there be a brother's son; unless he delivered *his uncle* from the hell called *put*, there could be no sufficient reason for not making an adoption. Consequently, he who is adopted as a son given, has a right to possess the inheritance and perform obsequies, although there be another nephew. He becomes the son of the adopter, under the rule of VISHNU (CLXXXV), which is expounded in the *Retnâcara*, "he is son of him to whom he is given by his father and mother." He claims the family of his adoptive father, under the text of MENU (CLXXXI).

"The funeral cake follows the family and estate:" thus, because the family or estate departs, the funeral cake also departs; by saying the funeral cake is extinct, his continuance of the lineage is denied. Hence this phrase, "the funeral cake follows the family and estate," does not signify, that, wherever the family or estate goes, the funeral cake also goes; for, were it so, a military man, or other person, taking the inheritance of a *priest*, who leaves no heir sprung from the same primitive stock, nor a fellow student, nor any kinsman, would offer the funeral cake. Nor does it signify, that the funeral cake is followed by the family and estate; for, were it so, *the adopted son* would not take the inheritance, but the grandson in the female line would claim the estate and family of his maternal grandfather, like a son. The *possible* misconstruction of the phrase is thus obviated. The same must be also understood in regard to the son of a wife: thus, if he belong to her husband alone, he shall not perform the obsequies of his natural father, since he does not share his estate and family; but the son of two fathers shall perform the obsequies of both.

On this VÁCHESPATI BHATTÁCHARYA remarks, if the right
be

be dubious, and there be no other argument deducible from precept, it is thus suggested, that the funeral cake shall not be offered unless the party can claim either the family or the estate : in this instance it is questioned whether the natural or adoptive father have a right to the funeral cake which must be offered by the son given ; *but* it appears, that he shall not offer the funeral cake for his natural father, because he does not assume his family *name* nor *take* his estate. In a case where the right is not dubious, the funeral cake shall be offered by a daughter's son to his maternal grandfather, although he do not claim the estate and family ; and if there be a positive ordinance, the funeral cake may be offered to a stranger without taking his inheritance. Hence, the assumption either of the family name or estate, is the ground of the claim ; that failing, the son's right to offer a funeral cake to the natural parent fails : his participation in the family and estate of his adoptive father is a true ground of claim, since he may assert the right of offering a funeral cake *to this parent*. It follows, that the son given claims the family and estate of his adoptive father. The same remark is made by RAGHUNANDANA, in the *Udvāha tatwa* : it appears that the son given shall claim the family and estate of his adoptive father alone, since he cannot assume the family name and estate of his natural parent, nor perform his obsequies, which are here signified by the terms "funeral cake" and "funeral oblation." RAGHUNANDANA explains the word *śwadhā*, an oblation to be eaten by progenitors ; thus, of him who has given away his son, that is, of the natural father, for this is the nearest term, the funeral cake, or oblation to be eaten by a progenitor, is extinct : it follows of course, that the funeral cake shall be offered to the adoptive father.

CCLXXVII.

Brahme purāna :—Those sons who are *adopted either as a son given, a son self-given, a son made by adoption, a son bought, or a son rejected*, must ever be maintained *with supplies of food and apparel* :

2. They

2. They claim *descent* from a different primitive stock, are separate in the oblation of funeral cakes, and propagate a distinct race; on the birth of a child, or on the death of a kinsman, they partake of uncleanness for three days *.

Even though the adopted son were a nephew, he partakes of uncleanness for three days *only*; for his original relation by the funeral cake, through his father and mother, being annulled by their gift, impurity for ten days is set aside; and uncleanness for three days arises from his connexion by the funeral cake in right of the adoption by the acceptor: but when a son is born to him, the adoptive father, his brothers, or any other kinsmen, all become impure for ten days, by reason of the connexion by the funeral cake in right of birth. Consequently, when affinity by the funeral cake arises solely from the gift of the father or the like, the uncleanness lasts three days *only*. Such is the opinion of some lawyers. VÁCHESPATI BHATTÁCHÁRYA holds, that, when sons given and the rest, have children born, or *themselves* de cease, the impurity of the adoptive father, and of his father and other kinsmen, last three nights.

VISHNU and other lawgivers declare, that a son given is debarred from inheritance by the son of a twice-married woman and the rest: but, according to MENU and the rest, he excludes them. VISHNU and other lawgivers consider him as inferior, because he has no natural connexion through his mother: MENU and the rest deem him superior, because he was lawfully begotten; and MENU likewise holds, that the son of the wife, on the supposition of his transcendent virtue, excludes a son given. But VRĪHASPATI declares the inferiority of the son of a wife (CCII). He assigns a higher rank to the son of the body, and to the son of an appointed daughter, because they are lawfully begotten, and are connected *with the father and grandfather* through their mothers (CCXV). Consequently these are highest in estimation: "other sons" (CCXV), *who shall only be maintained*, are sons given and the rest: the son selfgiven is included in the same description

* The first part of this verse has been cited at V. cclxxiv. On the subject of mourning, see MENU, Chap. V, v. LVIII, and following.

scription with the son made *by adoption*. “If pure by class” (CCII) ; this is intended to forbid the adoption of sons inferior in class. “Irreproachable for their conduct ;” this is intended to prevent the neglect of constant and occasional acts of religion. Consequently, the right of the son by a twice-married woman and the rest, to the exclusion of the sons given, bought, or the like, which is propounded by other Sages, alludes to sons so adopted, but who are impure by class, and reproachable for their conduct. The text of the *Brahme purāna* (CCLXXVII 1) relates to the same case.

Should not the son of a *Ṣūdrā* wife be also contemned, for he is born of a woman unrighteously married (CXLV 2) ? Still this son is not procreated by an adulterer : the marriage of his mother is alone unrighteous, not the procreation of the son ; on the contrary, there would be sin in not approaching a married *Ṣūdrā* in due season : the latter part of the text cited exhibits the period when the sin of marriage, not of procreation, is mature. But the son born of an unmarried woman of the servile class, is *named in law* son by a *Ṣūdrā*. He is mentioned by VASISHT’HA as sixth in rank, that is, sixth among the last six, or, in a word, twelfth.

A question here occurs for discussion. Can a son given be heir to a kinsman, or not ? On this point some lawyers affirm, that the right of the son given to inherit from a kinsman, which is mentioned by MENU and BAUDHĀYANA, and his superior rank, as ordained by GÓTAMA, VRĪHASPATI, and the *Cálicā purāna*, must be considered as relating to a son given, who is endowed with transcendent good qualities ; for the expressions used in the text of VRĪHASPATI, “pure by class, and irreproachable for their conduct,” denote transcendent good qualities : pure signifies ‘absolved from all guilt ;’ “by acts of religion, by alms, by study of scripture, and by sacrifice, men become pure, *or are absolved from all guilt.*” A text of MENU shows, that a son given, being endowed with every virtue, shall take the heritage.

CCLXXVIII.

MENU :—Of the man to whom a son has been given,
adorned

adorned with every virtue, that son shall take the heritage, though brought from a different family.

In like manner, the succession of a son given, notwithstanding the claims of a son by a twice-married woman and the rest, which is propounded by GÓTAMA, BAUDHÁYANA, and the *Cálicá purāna*, must be explained from the concurrent import of the texts of MENU and VRĪHASPATI. It is accordingly declared in the *Brahme purāna*, that sons given and the rest shall only be maintained (CCLXXVII); the omission of the son of a pregnant bride, in this text, is founded on the consideration of his affinity in right of birth. It should not be alleged, that the text of the *Brahme purāna* relates to culpable sons of these descriptions. It is declared, that, if culpable, even a son of the body does not take the heritage (CCLXIV): hence vicious sons, whether begotten in lawful wedlock or the like, or adopted as sons given and the rest, are excluded from participation; sons so adopted, being void of good qualities, shall have a maintenance: but such sons, being virtuous, shall take the inheritance of a father, or of his kinsman. This is right, say these lawyers. But others contest this opinion, *drawing other inferences* from the subjoined text cited in the commentary on YÁJNYAWALCYA.

CCLXXIX.

VRĪHASPATI, after premising the *Cali* age: — Sons of many different sorts, who were made by ancient Sages, cannot now be adopted by modern men, destitute of eminent powers.

Sons of many different sorts, namely sons of a wife and the rest, who were made by ancient Sages, cannot now, in the *Cali* age, be adopted by modern men. Why? To this question he replies by an epithet which contains the reason, “destitute of eminent powers.” Consequently eminent power, arising from true piety, is stated as requisite to make him a son who is begotten on a widow, or on a married woman, *whose husband is impotent*:

tent : hence it appears, that such a son ought alone to be considered as superior in rank, for *the filiation of* whom devotion is not *particularly* required. But the filiation of a son given in adoption being admitted by the *Aditya purāna* in the *Cali* age, *eminent* devotion is not required for *the adoption of* such a son, any more than for a son legally begotten. The son given, like the son begotten in lawful wedlock, is therefore superior to the rest.

CCLXXX.

Aditya purāna :—The filiation of any but a son legally begotten, or given in adoption *by his parents, is a part of ancient law abrogated in the Cali age.*

“Virtue” in the text of *MENÜ* (CCLXXVIII) signifies ‘absence of vice ;’ and “pure by class and irreproachable for their conduct,” in the text of *VRĪHASPATI* (CCII), bears the same import, say these lawyers. That is inaccurate. Sons are of two sorts, *by birth and by adoption* ; the son lawfully begotten and the rest, are six sons properly so called ; the son given and the rest, are six sons improperly so denominated : the chief of each set, the son lawfully begotten, and the son given in adoption, are approved in the *Cali* age. Accordingly *VRĪHASPATI* describes the appointed daughter as superior to the son given ; *their relative* superiority and inferiority depend not on piety. This, which is quoted as the opinion of some lawyers, is accurate. But in fact all sons, whether born of a twice-married woman and the like, or given in adoption and so forth, are heirs to kinsmen, as well as to their own fathers ; yet, if void of good qualities, they shall not take the heritage of a kinsman : however, they shall have the shares of the paternal estate allotted to them by the *Brahme purāna* and other authorities, but some shall have a maintenance only ; the due allotment shall be made, as deduced from the several preceding texts. It appears to be the present practice for a son given in adoption, who performs the acts prescribed to his class, whether constant, occasional, or voluntary, such as sacrifice, consecration

secration of pools, and so forth, to take the inheritance of his paternal uncles and the rest. This we hold to be proper.

“Virtue” in the text of MENU (CCLXXVIII) is explained by CHANDÉSWARA and others, science and good conduct: “irreproachable for their conduct,” in the text of VRĪHASPATI (CCII), suggests one who is exact in the performance of every act of religion; “pure by class” excepts one who belongs to an inferior tribe. CHANDÉSWARA remarks, on the expression “adorned with every virtue,” that the right of succession being suggested by filiation alone, “adorned with every virtue” is intended to show, that he shall take a share even though a son of the body be produced; but if void of virtue, the son given shall have a simple maintenance. It is also proper to affirm, as intended by that expression, that sons given and others, being virtuous, are entitled to the inheritance and so forth, in preference to a son by a twice-married woman or the like, if he be destitute of good qualities; but if all be destitute of good qualities, he who is superior, as nearest allied by birth, shall take a full share of the paternal estate, and the rest shall have the portions allotted to them in the *Brahme purāna* and other works. The maintenance directed (CCLXXVII) must consist in the receipt of such a share; else the *seeming* contradictions in the texts of MENU and others, and of YÁJNYAWALCYA and the rest, could not be well reconciled. But some argue, from the concurrent import of the text of DÉVALA (CXC 4), that the text of the *Brahme purāna* also relates to sons given and the rest, who are inferior in class to their adoptive fathers. This brief exposition may suffice.

SECT. IX.—On the Son Bought.

He is eighth according to YÁJNYAWALCYA; for, immediately after describing the seventh, or son given, he thus describes the son bought: “he who is sold by them (*by his father and mother*), shall be considered as a son bought” (CCXXXVI).

Although a son given and a son bought equally become *the property of the adopter* by the voluntary act of the original owner, he considers the son bought as inferior to the son given, because the sin of selling offspring is greater. Many legislators concur in deeming him inferior. The rules respecting him are similar to those concerning the son given. “And the rest,” in the texts of the *Cálicá purána* (CLXXXII 2, and CLXXXIII), comprehend the son bought, and the rest. VISHNU names him as ninth in rank (CLXXXV).

CCLXXXI.

BAUDHÁYANA :—He is called a son bought, who is received, for the sake of male issue, from the hands of his father and mother, or either of them, *after paying a price.*

“Or either of them,” if he be received from the hands of his mother, the consent of her husband must be required in the form which has been mentioned in the preceding section. By the expression of VASISHT’HA, “let not a woman give a son” (CCLXXXIII), which has a secondary sense without abandoning its primary signification, sale and the like is definitely intended; for, by parity of reasoning, there is occasion for the assent of the husband, since HÁRITA maintains, that a woman can claim no independence in the receipt or disposal of wealth. This is taken from the *Retnâcara*.

“After paying a price” must be supplied; for that corresponds with the text of YÁJNYAWALKYA, since the verb *crí*, joined to the preposition *vi*, signifies delivery preceded by payment of a price, and is so employed in that text.

CCLXXXII.

MENU :—He is called a son bought, whom a man, for the sake of having a son *to perform his obsequies*, purchases from his father and mother, whether the
boy

boy be equal or unequal to himself in good qualities ; for in class all adopted sons must be equal.

“ Unequal ;” not of the same class. The *Pārijāta*.

Neither should a child of inferior, nor one of superior class, be adopted as a son ; the mention of “ equal or unequal ” must therefore relate to good qualities.

The Authors of the *Méd'hātī'hi* and *Pracāśa*.

CULLÚCABHATTA quotes the following text of YÁJNYA-WALCYA :

CCLXXXIII.

YÁJNYAWALCYA :—This law (that, on failure of the best, the next best shall offer the funeral cake, and possess the heritage) has been propounded by me in respect of sons equal in class.

Thus, since the texts of both have the same purport, equal class is required in all cases, excepting that of a son by a *Súdrā*. In like manner equality of class is also assumed in the case of a son by a twice-married woman, and the rest.

He is called a son bought, who, being sold by his father and mother, is received for the sake of male issue, even though he be unequal in class ; for the text of MENU expresses, “ whether the son be equal or unequal.” The *Dīpacalīcā*.

For the commentator thinks, that, if equal, in the definition of a son given, as delivered by MENU (CCLXXV), signify “ of the same class,” it ought to signify the same in this place also ; if there also it signify equal in good qualities, as it is expounded in the *Méd'hātī'hi*, that is not pertinent, when the good qualities of a child five years old must be examined. Were this interpretation admitted, would there not be an inconsistency with the text of YÁJNYAWALCYA (CCLXXXIII) ? No ; for that text may be expounded, “ in respect of eleven sons, omitting the son bought.” But, in fact, a child of a lower class may truly become a son by adoption ; for DÉVALA declares, that sons of a lower tribe must live under him of equal class (CXC 4).

The expression of YÁJNYAWALCYA, “ in respect of sons equal

in class," is intended to preserve the order of succession: for, if the son by a twice-married woman belong to an inferior tribe, and the son given be superior to him, then the adopted son, *who is of superior class*, shall alone take the inheritance; but if the son by a twice married-woman were equal in class, he would be the legal heir.

This son bought is son of the purchaser, and participates in his family and estate. He is superior to the son made *by adoption*, and the rest. This shall be hereafter discussed. As for the text of YAMA (CXCI 4), which describes the son bought as fifth, that is, as fifth among the last six, or the eleventh *of the twelve sons*, that must be understood when he is inferior in good qualities to the son rejected, and the rest. The text of VISHNU, which places him ninth (CLXXXV), must be also adduced when the son of a pregnant bride is *more virtuous than he*. According to the *Brahme purāna*, the son bought shall have a tenth part of such share as is allotted to the son of the body (CCXVII 3).

SECT. X.—On the Son made by Adoption*.

He is ninth according to YÁJNYAWALCYA; for, immediately after describing the eighth, or son bought, he describes this son as one who is made by the adopter's own act (CCLXXXVI).

CCLXXXIV.

* Sons are thus adopted in *Mit'hilā*; the practice of adopting sons given by their parents was there abolished by SRI'DATTA and PRATIHASTA, although the latter had been himself adopted in that manner. Their motive was, lest, a child already registered in one family, being again registered in another, a confusion of families and names should thence ensue. A son adopted, in the form so briefly noticed in the present section, does not lose his claim to his own family, nor assume the surname of his adoptive father: he merely performs obsequies, and takes the inheritance. In *Gaura*, on the contrary, and in most other countries, sons are only adopted in the form discussed in the eighth section; but the *Góswámís*, and other devotees, who lead a life of celibacy, buy children to adopt them in the mode which is briefly considered in the ninth section. The practice of appointing brothers to raise up male-issue to deceased, impotent, or even absent husbands, (see Sect. IV.) prevails in *Orisa* (O'dra-désa). T.

CCLXXXIV.

BAUD'HÁYANA :—He whom a man adopts, the boy being equal in class, and consenting *to the adoption*, is a son made.

One who consents ; that is, one who thus acquiesces, “ I will become his child ; he shall take me as his *own* son.”

The *Retnâcara*.

He is inferior in rank to the son given, and to the son bought, because he is not given away by his father and mother, to whom he belongs. In fact, the boy is bereft of father and mother, or is forsaken by them ; or, both being living, they *tacitly* consent to the adoption, as a man acquiesces in another's enjoyment of his land. Or this son is, *as it were*, made of *cûsa* grass and the like, endued with life by the power of devotion. If he do not consent to become son *of the adopter*, what shall be the consequence ? The boy does not become *his* son. Or, as GANGÁ consented to become daughter of JAHNU, so, if any one accept the relation of son to another, and the other admit him as such, then he becomes son of two fathers. His precedence above the son self-given, and the rest, supposes him endued with good qualities.

CCLXXXV.

MENU :—He is considered as a son made, *or adopted*, whom a man takes as his own son, the boy being equal in class, endued with filial virtues, acquainted with *the merit of performing obsequies to his adopter*, and with *the sin of omitting them*.

According to CULLÚCABHATTA, “ equal,” or similar, here signifies equal in class. It is explained in the *Mêdhâtiti'hi*, endued with qualities suitable to the family. “ Acquainted with merit and with sin ;” this is explained in the *Retnâcara*, knowing the merit of performing obsequies to his father and mother, and the sin of omitting them : “ endued with filial virtues,” that is, with the virtues of obedience and the like.

Being similar to a son given, he ought to be adopted under the age of five years, as ordained in the *Cálicá purána* (CLXXXIII). Nearly the whole form directed for a son given should be observed. It must be affirmed, that his future eminence in literature is conjectured from the ready apprehension and docility discovered by him at the age of five years. All this is *vague and complimentary*, for it is not requisite to filiation.

This son claims the estate and family of his adopter ; the text of the *Brahma purána* (CCXVII 2) allotting a fifth part to the son made, supposes him endued with transcendent virtue ; and so do the texts of MENU and the rest. This brief statement may suffice.

SECT. XI.—*On the Son Self-given.*

He is tenth according to YÁJNYAWALCYA ; for, immediately after describing the ninth, or son made, he proceeds to describe the son self-given.

CCLXXXVI.

YÁJNYAWALCYA :—He who is sold by them (by his father and mother), shall be considered as a son bought ; a son made is adopted by the act of the adopter himself, but he who gives himself is a son self-given ; and one received, while yet a foetus in the womb of his mother, is called the son of a pregnant bride.

VISHNU says, “ the tenth is a son self-given ” (CLXXXV) ; to which it is added in the *Retnācara*, he is son of the man to whom he gives himself.

CCLXXXVII.

MENU :—He who has lost his parents, or been abandoned

doned by *them* without just cause, and offers himself to a man *as his son*, is called a son self-given.

“ Offers himself ;” gives himself, saying “ I am thy son.”

The *Retnâcara*.

He who, having lost his father and mother, or being forsaken by them without just cause of abandonment, gives himself to a man *as his son*, is called a son self-given, and is considered by MENU and the rest as son of that man. CULLÚCABHATTA.

He is inferior to the son given, and to the son bought, because he is only given by himself, having acquired a secondary power *over his own person*. The son made *by adoption*, say some lawyers, is distinguished from this son, because he only acquiesces in the adoption which is the act of another, and does not give himself. This son may, *however*, claim precedence above the son made. The *Brahme purâna* assigns a twelfth part to him.

SECT. XII.—*On the Son of a Pregnant Bride.*

He is eleventh, according to YÁJNYAWALCYA ; for, immediately after describing the tenth, or son self-given, he thus describes this son ; “ and one received while yet a foetus in the womb of his mother, is called the son of a pregnant bride” (CCLXXXVI) ; that is, one accepted while he remained in the womb *of his mother* : it is thus intimated, that he is son of him who marries her. VISHNU says, “ the seventh is the son of a pregnant bride ; and the male child of a woman espoused while pregnant, is son of the man who marries her ” (CLXXXV).

CCLXXXVIII.

MENU :—If a pregnant young woman marry, whether her pregnancy be known or unknown, the male child in her womb belongs to the bridegroom, and is called a son received with his bride.

The author of the *Pracāśa* remarks, that the solemn rite of marriage does not take place; for a text declares, that holy nuptial texts are applied solely to virgins (Book IV, v. CLXVIII); but this woman is not a virgin, since she has had intercourse with man. On this subject ancient authors observe, that in this place "marry" relates to the form of marriage directed in the *At'harvan vēda*, which is ordained by scripture for women who are not virgins, and which is now practised by *Sūdras* of the lowest rank, and by others. Since holy nuptial texts are confined to virgins, this term, "marry," intends the oblation to fire on the fourth day, and other rites celebrated without texts. Thus CHANDÉSWARA. But, in fact, since the text expressed only "received while yet a foetus in the womb," acceptance alone is determinately meant: the requisites of *this filiation* do not extend to the oblation to fire; else, were that oblation casually omitted during pregnancy, the child would not be a son received with a bride, and might be supposed to become son of his maternal grandfather. But he is not son of his maternal grandfather; for, like ornaments and the like, the child was given away by him with his daughter. He is son of the bridegroom alone; not received *as such* in right of birth, for he is not produced from the seed of his legal father, nor from a receptacle appertaining to that father at the time of procreation; but becomes his son mediately, in consequence of acceptance, because the mother, who is owner of the child, is transferred to the bridegroom by the maternal grandfather's gift.

Being deficient in good qualities, he is inferior to the son given, and the rest. The offspring of an unmarried girl, considered as son of him who *subsequently* marries her, may be also deemed inferior to that son. If the natural father be known, the child belongs to him alone. The *Brahme purāna* (CCXVII 3) allots a ninth part to the son of a pregnant bride. This brief exposition may suffice.

SECT. XIII.—On the Son Rejected,

He is twelfth, according to YÁJNYAWALCYA; for, immediately

ately after describing the eleventh, or son of a pregnant bride, he thus describes this son :

CCLXXXIX.

YÁJNYAWALCYA:—He who, being forsaken *by his natural parents*, is received by another, shall be considered as a son rejected.

VISHNU (CLXXXV) says, “the eleventh is the son rejected ;” being forsaken by his father and mother, he becomes the son of him by whom he is received, The text must be so supplied.

CCXC.

VASISHT’HA:—The fifth is the son rejected, whom a man receives as his son, the boy having been forsaken by his father and mother.

The fifth rank is mentioned, as is observed in the *Retnâcara*, meaning the fifth among the last six ; consequently he is eleventh in rank,

CCXCI.

MENU:—A boy whom a man receives as his own son, after he has been deserted *without just cause* by his parents, or by either of them *if one be dead*, is called a son rejected.

“Deserted ;” abandoned. The desertion may be caused by utter inability to support the child, or by some defect *in* him ; he must be received as a son, not *merely* received from a willingness to maintain the child. The *Retnâcara*.

The child is deserted with *some* such thoughts as these : “he is thrown away like the chaff of corn ; any man may take him or not as he pleases ; I have no occasion for this child.”

The son self-given is superior, because he is given by a secondary owner, namely himself ; but this son is inferior, because he
was

was similar to a waif, not being then recognized as son of any man ; for, in this world, the finding of a waif is considered as a less perfect title than a gift. But in the case of a son made, the child being adopted by another, although the father and mother were living, their right is forfeited by neglect, like the right of a man to a chattel adversely enjoyed by another. As in the case of land, that neglect is an act of will, which may be expressed in these words, " this land is possessed by another ; let him enjoy it, and let it become his absolute property ;" so in the case of a son, the act of the will may be thus expressed, " this man adopts him for his son ; let him do so, and let the child become his son." Consequently, the principal owner tacitly consenting, the son made *by adoption* is therefore superior to one self-given, and to him who is rejected *by his natural parents* : in the case of a son rejected, the owner assents to the loss of his own right, but not to the substituted right of another ; in the case of a son made, *he* also assents to the substituted right of another. Were it so, what difference would there be between a son given and a son made, since the owner equally assents in both instances to the loss of his own right, and to the substituted right of another ? Neglect is the foundation of the *substituted right to a son made*, but gift is the foundation of *such right to a son given* : the difference between them is this ; donation is an act of the will contemplating the transfer of property to another, and which may be thus expressed, " let this become his property ;" neglect is an act of the will contemplating property arising from occupancy, and which may be thus expressed, " let this, which is occupied by him, be lost to me, and become his by occupancy." The neglect may be of a different nature, solely contemplating the loss of right, and which may be thus expressed, " let my right be forfeited : " this is the foundation of the *substituted right to a son rejected*. In the former instance of neglect, property vests in the actual occupant *alone* ; in the last instance, it *subsequently* vests in any occupant whomsoever.

The *Brahme purāna* (CCXVII 2) allots a seventh part to the son rejected. This brief exposition may suffice.

SECT. XIV.—On the Son by a 'Súdrá.

He is not particularly noticed by YÁJNYAWALCYA. Since "any-how" in the text of VISHNU ("the twelfth is a son any-how produced," v. CLXXXV), is expounded in the *Retnácara* 'by a 'Súdrá woman married or unmarried,' the son of a 'Súdrá wife is also considered as thirteenth in rank. His share of the inheritance has *indeed* been propounded by YÁJNYAWALCYA (CXLII). The concurrent import of the texts of MENU and VASISHT'HA is the foundation on which the term "any-how produced" is restricted to the son procreated on a 'Súdrá woman.

The text cited in a former chapter (CLXXVII) is inserted by MENU in the place where sons of twelve sorts are defined, immediately after describing eleven sons. *Páraśava* (a living corpse) is a name for the son of a *Brāhmanā* by a 'Súdrá woman. It is thus explained in the *Retnácara*; "though fulfilling *his duty*" (*pārayan*), that is conferring some benefit on his supposed father, "he is even as a corpse," because the benefit is inconsiderable. The word *pārayan* may also signify "living."

CCXCII.

VASISHT'HA :—The sixth is the son by a 'Súdrá.

Sixth here relates to the last six.

The *Retnácara*.

CCXCIII.

BAUDHĀYANA :—A son begotten through lust on a 'Súdrá woman by the chief of twice-born men, is called a living corpse (*páraśava*).

The share of a son by a married 'Súdrá had been propounded by MENU, YÁJNYAWALCYA, and others. MENU (CLXXVII), and VISHNU (CLXXXV), now speak of a son by an unmarried 'Súdrá. Accordingly MENU, immediately after this text (CLXXVII),

(CLXXVII)*, notices the participation of a son begotten by a man of the servile class on his female slave (CLXXVI); "man of the priestly class" in this text signifies a *Bráhmaṇa*, *Cshatriya*, or *Vaisya*. But *YÁJNYAWALKYA* has not allotted any share to the son of a twice-born man by a female slave. The share of such a son, who is *consequently* of a different class from his father, and far inferior in rank to other sons (CCLXXXIII), must be deduced from the texts of other Sages. The law is thus explained; and we hold this reasonable: *JÍMÚTAVÁHANA* also concedes *to this opinion*.

SECT. XV.—On the Adoption of Sons.

CCXCIV.

Smṛiti, cited in the *Retnácara* :—Sons by women of the servile class, though they be *Súdras* and slaves, are in some instances *deemed the legal sons* of priests; and so they are of kings consumed by curses, and ever doomed to perish :

2. And sometimes they are *considered as the legal issue* of men who seek wealth, or practise warfare.

The supposed impossibility of *their becoming legal sons* of these men is denied. The *Retnácara*.

Hence, if a man be destitute of other offspring, his child by a woman of the servile class must be acknowledged as his son.

CCXCV.

If there be a son of the body, or a son of an appointed daughter ;

2. The son of a wife and the rest, of eleven sons, must

* *MENU*, Chap. ix. V. 178 and 179.

must be considered as belonging to distinct families, and as perpetuating a separate race.

3. All such sons shall ever perform obsequies and other rites for those fathers, like slaves, *or like men of the servile class.*

If there be a son of the body, or if there be a son of an appointed daughter, then the son of a wife and the rest merely propagate a family ; such is the construction. “ Like slaves,” in the form which should be practised by a slave, *or by a man of the servile class.*

The *Retnâcara*.

CCXCVI.

A son of concealed birth, the son of an unmarried woman, the son received with a bride, the son by a *Súdrá*,

2. And the son by a twice-married woman, are five who are shunned by men of the commercial class, through apprehension of a fine *to be paid* to the king ; all the rest are likewise heirs *of twice-born men.*

It is thus declared possible that men of the commercial class may have sons considered as such in a secondary point of view.

The *Retnâcara*.

“ Likewise ” alludes to the sons improperly so called. It is thus declared possible, as is observed in the *Retnâcara*, that a subsidiary son may be adopted by a priest, a soldier, or a merchant.

CCXCVII.

Men of the servile class, acting as slaves, living on food supplied by another, and subject in their persons to the dominion of a master, can in no instance have a son.

2. The

2. The male child who is begotten by such a slave, becomes himself a slave.

It is a notion intimated in the *Retnâcara*, that since the text of MENU (Book III, v. LII) must be considered as declaratory of the subjection of a slave to the will of his master, he is subject to his controul even in the adoption of a son, and that the child is in like manner subject to the dominion of his master.

CCXCVIII.

MENU:—On failure of the best, *and of the next best among those twelve sons*, let the inferior in order take the heritage; but if there be many of equal rank, let all be sharers of the estate.

Among the sons above-mentioned, *namely*, the son of a wife and the rest, *all* being virtuous, *let the best take the heritage*; on failure of virtuous children, a worse son, deficient in good qualities, is entitled to the succession. But if there be many of various descriptions, such as the son of a wife and the rest, who are *all* endued with equal good qualities, they are all equal sharers of the estate.

“ Similar ” is explained in the *Retnâcara*, equal in good qualities, or in unessential properties. The *author's* notion of the *purport of the text* is the same. Consequently, MENU intends that the rule of succession to heritage and the like should be drawn from the different degrees of virtue, without attending to the difference of the form in which a son is adopted. This is also the opinion of other legislators; but they have described a particular order, on the supposition of proportionate good qualities. Thus some explain the text. *According to others*, “ on failure of the best, and of the next best,” that is, of the first mentioned respectively, the inferior in order, or next mentioned, succeed *to the heritage*. Thus YÁJNYAWALKYA directs, that, “ on failure of those first mentioned, the next in order shall give the funeral cake, and claim the heritage ” (CLXXXIX).

CCXCIX.

CCXCIX.

VISHNU :—Among these the first in order is preferable ; he alone shall take the heritage, and shall support the rest.

CCC.

NÁREDA :—The first in order are severally considered as eldest or superior, the last are respectively deemed inferior ; on the death of the father, they succeed in order to his estate.

2. On failure of the first, and next in rank, he who is inferior *in the next degree* shall take the inheritance.

CULLÚCABHATTA also says the same : he thus expounds the last half of the text of MENU (CCXCVIII) ; ‘ if there be many ‘ sons of the same description, such as sons by a twice-married ‘ woman or the like, they shall all take and divide the heritage.’ He explains similar, “ equal in rank,” being sons of a twice-married woman or the like. In the gloss of the *Retnácara*, the term “ unessential properties,” alludes, say these other lawyers, to the rank as sons by a twice-married woman or the like. According to this opinion, the son of the wife and the rest are never equal to the son of the body. That opinion only is accurate. Accordingly the *Brahme purána* assigns the whole estate to the son of the body though last born (CCXVII) ; that is, if partition be made by a father, he shall give to his son born in lawful wedlock the full share directed under that head : he shall give the third part of such a share to the son of the wife, and reserve for himself as much as he pleases, or a double share, (for there is a difference of opinion on that point) : in like manner, he shall give the fourth part of a share to the son of an appointed daughter, and their due allotments to the rest. If there be many sons, namely, a son of the wife, a son of the body, an appointed daughter, and so forth, let him so distribute the estate that the son of

the body may have twice as much as the son of the wife, thrice as much as the appointed daughter, and so forth, and *the father* himself have twice as much as his son begotten in lawful wedlock. The natural distribution has been propounded by YÁJNYAWALCYA and others. The form of *partition*, expressly mentioned in the discussion on sons of twelve descriptions, must be observed: but if there be a difference of good and bad qualities, the form of distribution directed in the *Brahmé purāna* and the rest must be adopted.

It is recorded in *Purānas* and other works, that a king, having purchased a boy named 'SUNAHŚÉP'HA, who was sold by his father, attempted to sacrifice him to the divinity; but the boy, being saved from death by divine interposition, became son of the sage VISWÁMITRA: in what form did 'SUNAHŚÉP'HA become his son; for he was not a son given, since the boy was not bestowed by his father on VISWÁMITRA? He was a son self-given; for, a boy having given himself as a son, when the right of his father and mother was annulled by their leaving him to die, or by any other means, the definition of a son self-given is applicable to him. This brief explanation may suffice: to expatiate would be vain.

Among the twelve descriptions of sons begotten in lawful wedlock and the rest, any others but the son of the body and the son given are forbidden in the *Cali* age. Thus the *Aditya purāna*, premising "the filiation of any but a son lawfully begotten or given in adoption *by his parents*" (CCLXXX), proceeds: "These *parts of ancient law* were abrogated by wise legislators, as the cases arose at the beginning of the *Cali* age, with an intent of securing mankind from evil; *that is, with an intent of preventing the guilt of mankind*; the term bears the sense of prevention, as in the phrase "smoke made as a precaution against gnats;" for that is one of the senses ascribed to this term in the dictionary of AMERA. The meaning therefore is, mankind would be culpable if the practice of raising up a son on the wife of a kinsman and so forth were *now* followed. So VÁCHESPÁTI BHATTÁCHÁRYA expounds the phrase: but others explain the terms 'for the sake of preserving mankind;' the word used signifies 'intend,' as in the phrase "wood intended for a post to be erected as a memorial of a sacrifice performed." Consequently the meaning is this; mankind would perish if the practice of raising up a son

on the wife of a kinsman and so forth were *now* followed. Formerly, men proceeded, without amorous dalliance, *to procreate issue* on a brother's wife, (who is similar to a mother or a daughter in law,) with the sole view of raising up offspring to a brother: now, men being governed by lust and grovelling appetites, and their passions being excited by simply looking on the face of a woman in private, they would repeatedly approach *a brother's widow* under pretence of raising up issue to him; mankind would be thus culpable, and perish through the prevalence of sin. In like manner sufficient reasons may be assigned for the prohibition of appointing a daughter and so forth. Again, by the term "powers" in the text of VRĪHASPATI (CCLXXIX) is meant, not only devotion, but the consequence of it, namely command over the senses.

Among these twelve descriptions of sons, we must *only* now admit the rules concerning a son given in adoption and one legally begotten. The law concerning the rest has been inserted, to complete that part of the Book; as well as for the use of those who, not having seen such *prohibitory* texts, admit the filiation of other sons. Thus, in the country of 'O'dra ('O'rifa), it is still the practice with some people to raise up issue on the wife of a brother.

CCCI.

MENU :—These eleven sons (the son of the wife and the rest as enumerated) are allowed by wise legislators to be substitutes *in order* for sons of the body, for the sake of preventing a failure of obsequies.

Hence a son given and the like should only be adopted on the possibility of a failure of obsequies, not if they can be *otherwise* performed. If one who has a son legally begotten, adopt a son given, is the adoption valid or not? and what occasion is there for its validity, since the obsequies must be performed by the son legally begotten? There is occasion, for the purpose of removing the doubt whether the obsequies shall be performed by the son given if the son of the body afterwards die. To this some reply, that sons given and the rest being described as substitutes, and substi-

tution being only admitted on the failure of the principal, the adoption of the son given is void, because there was not at that time a failure of the principal; and if the son of the body afterwards die, the obsequies shall be performed by the wife, or by a collateral heir. That is wrong; for the son given, not the adoption of him, is described as a substitute: there is no difficulty in saying that, on failure of the principal, or son legally begotten, the son given shall act as such. Accordingly SRÍD'HARA SWÁMÍ, in his gloss on a verse of the *Bhāgavata* (CCXVI), quotes a text of law on the benefit arising from a multitude of sons, to explain the motive for desiring many children, when a subsidiary son *is adopted* even though a principal one be living: "Many sons are to be desired, that some one of them may travel to *Gayá*."

The adoption of a son given, although a son of the body be living, being thus valid, he shall have a third part as his share, in the same manner with a son given, subsequently to whose adoption a son of the body was born (CXC). "Heirs" (CXC 3); that is, entitled to a full share. "Shall have as their share one third of the property" (CXC 4); that is, they shall have as a share one third part of that which is receivable by the son legally begotten. What shall be the share? Shall the son given receive four or three *suvernas* out of twelve which compose the share received by the son of the body? or shall the son of the body receive twice as much as is received by the son given? To this it is answered, if it be the meaning of the law that he shall take one third part out of the share which is received by the son legally begotten, then what would be the consequence if there be many such? the son given would receive an excessive sum if he took a third part from each. Nor shall he take one share out of the collected wealth; for, though single, he would not receive a *full* third part, and the legitimate sons would have more *than their due allotments*. Neither is the second supposition right; for, were it so, he would take a quarter *instead of a third*. Thus the last supposition must be admitted. It may be illustrated in this manner: in the case of partition made by a father, according to the opinion of JÍMÚTAVÁHANA and the rest, let two sons legally begotten take eight *suvernas* each out of thirty-six inherited from a paternal grandfather, let the father take sixteen *suvernas*, and the son given four. The

The meaning of the text is, that an adopted son shall have a third part of the share appertaining to a son legally begotten. Some hold, that, in a partition of hereditary property made by a father, who has one son given and two sons begotten in lawful wedlock, the whole estate shall be divided into thirteen parts, of which six belong to the father, three to each of the two sons legally begotten, and one to the son given : *according to these lawyers*, the meaning of the text is, that an adopted son shall have a third part of such a share as is receivable by a son begotten in lawful wedlock. That is wrong ; for it is not deduced, from the phrase “ shall have as their share one third part,” that they shall have a share equal to one third part *of what is received by the son legally begotten*. As for the exposition, that an adopted son shall take one third part of such a share as is receivable by this son in right of his legitimacy ; that is wrong, for there would be none to take the remaining two thirds. If the remaining two thirds were again divided, nothing would prevent a second remainder of two thirds ; and that cannot be the sense of the text.

Lawyers justify the text of the *Brahme purāna* (CCLXXVII), as relating to the same subject with the phrase “ those of a lower class must live under him, with a provision of clothes and food only ” (CXC 4). That is wrong ; for, were it so, the particular mention of sons given and so forth would not be pertinent. Consequently that text relates to a son given and others deficient in virtue, and it shows, that if any one of six sons, namely the son of the body and the rest, exist, he has a right to take a full share and to perform obsequies, and the son given or other adopted son shall have a third part for his maintenance.

Since the text of MENU (CCLXXI) must relate solely to the son given, or other child adopted while a son legally begotten exists, for it is of course declared by the text of DÉVALA, that an adopted son shall have a third part if a son of the body be afterwards produced, does it not follow, that the adoption of a son given, being made by one who has a son legally begotten, is invalid ? CULLÚCABHATTA has also remarked, that a son of the wife and the rest ought not to be obtained if there be a son of the body or an appointed daughter : does not this text relate to the same subject ? It should not be argued, that, like the rule, “ common property may not be given away by any one parcener,

and wealth necessary for the support of the family may not be aliened *even by a single owner*," this text is intended to forbid such adoption by one who has a son, not to declare the adoption void. Since it is demonstrably right to establish a moral offence in depriving the family of support, sin, not the invalidity of the gift, is thence deduced; but the text of MENU contains nothing prohibitory against such an adoption: for, sons given and the rest, who are produced from the manhood of others, that is, others than their *adoptive* father, and from the wife of another, (for the expression is merely illustrative;) these sons, it is said, being produced from another origin than the adoptive father's own seed and field, are *in truth* sons of him from whose manhood and wife they sprang, not sons of the adopter: it follows, therefore, that the adoption is void.

If this be alleged, the answer is, still the sense of the text would be irrelevant: why should not property arise in a son given, to one who has male issue, as well as in land given to him? and if property do arise, why should he not be a son capable of inheriting the estate and performing obsequies? It makes no difference whether the son of the body be born before or after the adoption. Sacred story records, that MENU appointed his daughter to raise up a son, although he had male issue. It should not be argued, that she merely propagated the family. Filiation being valid if she perpetuate the race, nothing can bar the right of succession vested by divine power. Accordingly it is observed in the *Retnâcara*, on the last part of the text above cited, "they belong in truth to the father from whose manhood they severally sprang, and to no other" (CCLXXI), that their claim as principals being denied, their claim as substitutes is hinted; "they are principal sons of no other:" the text must be so supplied. It should not be objected that the preceding text (CCCI) contains a vain repetition. It completes the sense. What then is the claim of one who is a substitute for a son? It consists in the right of performing the offices incumbent on a son, if there be no principal one. Admitting this inference from the opinion delivered in the *Retnâcara*, still adoption is prohibited according to the opinion of CULLÚCABHATTA, who holds that this ought not to be followed as a practice which is justified. It should not be argued, that by so acting a moral offence would be committed. There is no argument on which

which a moral consequence can be established when a temporal effect may ensue. But here the intention of the precept is to forbid adoption then only when there is no motive for it ; for the benefit desired, namely deliverance from the hell called *put*, is obtained without adopting a son given, and through him, therefore, that purpose is not effected : but one who desires numerous issue for other purposes besides deliverance from the hell called *put*, may adopt a son given and the rest, although he have one legally begotten. SRÍD'HARA SWÁMÍ and others have said as much. The *Retnâcara* and *Pârijâta* expressing, that a son given and the rest should not be adopted if there be a brother's son, it must be understood that the prohibition concerns one who merely desires male issue for the sake of deliverance from the hell called *put*. This justifies the fact recorded in the *Bhârata* and other works, that PÁNDU, having other male issue, accepted of BHÍMA, ARJUNA, and other sons of his wife ; and he did so although he had nephews. It should not be objected, that brother's son positively intends the son of an uterine brother only ; and " brothers of the whole blood," in the text of MENU (CCLXXVI), signifies brothers by both the same parents. The dual number is not supposed in an apposition of this form, unless there be special grounds of implication. It should not be argued, that the proceeding of PANDU, who was acquainted with the legal prohibition, is a ground of such implication. His conduct is declared to have been influenced by the desire of having a son endued with strength, and one skilled in jurisprudence and philosophy. VÁCHESPATI BHATTÁCHÁRYA also admits the adoption of a son given, although there be a brother's son. CULLÚCABHATTA, however, expounds " brothers of the whole blood," brothers by the same father and mother. MENU and VISHNU declare, that a son delivers his father from the hell called *put*.

CCCII.

MENU and VISHNU :—Since the son (*tráyaté*) delivers his father from hell named *put*, he was therefore called *puttra* by BRAHMÁ himself.

CCCIH.

HÁRITA :—A certain hell is called *put* ; and, he who is destitute of male issue is there tormented : a son is therefore called *puttra*, because he delivers his father from that region of horror.

CCCIH.

VRIHASPATI :—Because a son delivers his father from the hell called *put*, even by the sight of his countenance, therefore is a man solicitous for the birth of a son.

2. A son's son, and the son of an appointed daughter, both contribute to the attainment of heavenly bliss : both are equally pronounced fit for inheritance, and oblations of funeral cakes.

CCCV.

MENU and VASISHT'HA :—On him he devolves the burden of debt, by him he procures immortality, through him he joyfully becomes exonerated from every debt to living progenitors.

CCCVI.

SANC'HA and LIC'HITA, and PAIT'HINASI :—By a son, however produced, a father prospers ; through his oblation of funeral cakes, he becomes exonerated from debt to his progenitors.

CCCVII.

HÁRITA :—He who has a son pure, capable and virtuous

tuous in the first period of life, and perfected by the correction of his own defects, transports his ancestors over the abyss of death.

CCCVIII.

SANC'HA and LIC'HITA:—The perpetual support of a consecrated fire and the like, the scriptures and sacrifices rewarded with ample gratuities, do not procure the sixteenth part of the benefit arising from the birth of an eldest son.

2. Heaven is attained through the means of him who is celebrated as the fire of a son and of a grandson, and whose many children and himself, while living, had completed the *study of scripture*, and the *performance of sacrifice*.

With whom scripture and sacrifice is not incomplete; whose study of the *Vêda* and performance of sacrifice fail not: and that if he have many sons: such is the construction. It consequently appears to be a benefit arising from numerous issue, that many sons, and the father himself, fail not in the study of scripture and performance of sacrifice. "Many sons are to be desired, that some one of them may travel to *Gayâ*." Hence sons of various descriptions may be adopted by one who desires numerous offspring.

CCCIX.

SANC'HA and LIC'HITA, VISHNU and HARITA:—By a son a man obtains victory over all people; by a son's son he enjoys immortality; and, afterwards, by the son of that grandson, he reaches the solar abode*.

U 4

CCCX.

* MĒNU, Chap. ix. V. 137, cited at V. 11.

CCCX.

YÁJNYÁWALCYA :—Through a son, a son's son, and the son of a grandson, the father or ancestor obtains *bliss in other* worlds, immortality, and heaven; but the double set of oblations and the funeral cake are offered by a man's own son and other descendants, whether principal or subsidiary*.

Heaven signifies the solar abode; for the import is the same with that of the preceding text.

CCCXI.

VASISHT'HA :—The endless abodes are allotted to those who leave male issue; it is recorded, that “heaven is not for him who leaves no male progeny.” Enemies therefore pronounce *this curse*, “May they be childless, and become evil spirits!” The want of male issue is the great cause of destruction; therefore is a son desired.

It is declared in the *Vēda*, that heaven is not for him who leaves no male issue. It consequently appears that celestial bliss is attained through a son; and that is made evident by the text of YÁJNYAWALCYA. “The endless abodes, &c.” since the purport is the same, they are allotted to those who have grandsons; the word “son” here signifies offspring in general. It is thus declared that sons and other male descendants are most desirable. The Sage proceeds to show eternity *enjoyed* through the means of a son: childless men become invisible giants or demons; certainly that is a great evil by which the name of giant or demon is *affixed to manes*: such is the implied sense according to the *Ret-nācara*. “Enemies, &c.” this curse is pronounced by them.

CCCXII.

* The first hemistich has been cited at V. 104.

CCCXII.

Smṛiti, quoted in the *Retnácara* :—A son of any description should be anxiously adopted by one who has no male issue, for the sake of the funeral cake, water, and solemn rites, and for the celebrity of his name.

2. Fathers desire sons, dreading lest they fall to a region of horror, *and reflecting*, whosoever among these sons shall go as a pilgrim to *Gayá*, will convey us beyond those places of torture.

It follows, that all manes are carried beyond the regions of horror, in consequence only of obsequies performed at *Gayá*.

CCCXIII.

“A son will consecrate a bull *at my funeral*, will perform obsequies at *Gayá*, will make sacrifices, and consecrate pools; he will defend me in old age, and will daily offer the *śrāddha* after my decease.”

In the former text a pilgrimage to *Gayá* was alone mentioned; in this text obsequies are also specified; there is not consequently any vain repetition. “Daily;” every day, that is, every new moon. This alludes to the day of the patriarchs: a month of mortals, says AMERA, is a day and a night of the patriarchs. Or it may allude to obsequies constantly *or daily* performed.

CHAP. V.

EXCLUSION

FROM PARTICIPATION.

SECT. I.—*On Exclusion from Inheritance.*

CCCXIV.

As a man would be drowned who attempted to pass deep water in a boat made of woven reeds, so does a father sink in the gloom of death, who leaves only contemptible sons.

Consequently, he who is averse from performing constant and occasional rites, does not benefit his father: hence he is not capable of inheriting the paternal estate.

CCCXV.

APASTAMBA:—No doubt, all the sons who are virtuous take their shares; but him who illegally acquires wealth, even though he be the first born, let the king declare incapable of inheriting.

Who, though first born, illegally dissipates* wealth; such is the construction and sense: “illegally,” by gaming or the like: “incapable

* The same term is variously explained by the several commentators. I retain Sir William Jones's version of the text. T.

"incapable of inheriting;" capable of inheriting no more than the residue of a share, after deducting so much as has been dissipated by him. Some thus expound the text. The *Retnâcara*.

Consequently, so much shall be deducted out of his share as has been expended with no view to the support of the family, to religious duties, and the like: but if more than the amount of his own share have been expended, the law does not direct that the excess shall be considered as a debt; it is fit that he should only be deprived of his share.

A puerile author reverses the reading; but to him who acquires wealth by legal means, "an equal share with his father shall be allotted." That reading, says JĪMŪTAVĀHANA, is not traditional.

Others explain the term (*pratipādayati*), "acquires," or earns. Consequently, he who follows an illegal mode of subsistence, through avidity for wealth, without the sanction of the law, shall be deprived of his share. "Following an irregular profession," in the text of GÓTAMA, signifies subsisting by unlawful means.

CCCXVI.

GÓTAMA:—Though son of a woman equal in class, he who follows an irregular profession, does not take a share *of the inheritance*, according to some *lawgivers*.

CCCXVII.

MENU:—All those brothers who are addicted to any vice, lose their title to the inheritance.

"Any vice;" any forbidden acts, such as slaughter or the like, and reprehensible means of subsistence, (Book II, Chap. iv. V. 20 and 27.) The virtual sense of the text (Book II, Chap. iv. V. xxvii 2), say these lawyers, is, that usury, agriculture, and commerce, are honest professions for a *Vaiśya*; but, followed by a *Brāhmaṇa* or a *Cshatriya*, partake of the quality of passion.

Of these two the preferable opinion may be determined by the *regular*

regular sense of the word *pratipādayati*. According to the best authors, the verb *pad*, preceded by *prati*, and augmented by the suffix *nyi*, is employed in the sense of “give;” preceded by *ut*, it is used as signifying to generate or produce. By the word “though,” in the text of GÓTAMA, it is intimated, “much less shall the son of a woman unequal in class *take a share, if he follow an irregular profession:*” “share” must be supplied in the text.

By the expression “even though he be the first born,” the middlemost and the rest are included in the text of *APASTAMBA*: an alternative, says the author of the *Pracāśa*, is deduced from a reference to the case of one who is able to avoid illegal practices. Consequently the expression “according to some” denotes a contingency: and that contingency is thus settled: he who can avoid irregular means of subsistence, shall take a share; but if he do not avoid them, he shall not participate. GOVÍ-CHANDRA also affirms, that the expression “according to some” denotes a double contingency, not a difference of opinion.

CULLÚCABHATTA expounds “addicted to any vice,” (CCCXVII), devoted to gaming or the like. Others explain it ‘inclined to dissipate the wealth of the family.’ JÍMÚTAVÁ-HANA interprets it ‘averse from performing their father’s obsequies, and other acts of religion.’ According to the opinion inserted in the *Retnācara*, as maintained by some lawyers, the precept for depriving a gamester or other vicious person of his share, must be understood as signifying the allotment of a share diminished by so much as has been dissipated. According to other commentators, men addicted to gaming, or the like, are not deprived of their shares, but men who follow an illegal profession. Such is the difference between these two opinions: but it must be noticed, that many authors acknowledge the exclusion of a man addicted to gaming and similar vices.

CCCXVIII.

SANC’HA and LIC’HITA:—Of him who has been formally degraded, the right of inheritance, the funeral cake, and the libation of water, are extinct.

“Formally

“Formally degraded;” expelled by his kinsmen, with the ceremony of kicking down a water-pot*, for a crime *in the third degree*, such as killing a *Cshatriya* without malice, or the like.

The *Retnâcara*.

JÍMÚTAVÁHANA explains “formally degraded,” excluded from the joint libation of water. Both opinions coincide.

CCCXIX.

VRĪHASPATI:—Though born of a woman equal in class, one who is not virtuous shall have no claim to the paternal estate; it is ordained to devolve on those learned priests who offer the funeral cake to the deceased†.

2. A son redeems his father from every debt whatsoever due to superior or inferior beings; no advantage is therefore gained through one who neglects that duty.

3. What can be done with that cow which neither affords milk, nor becomes pregnant? Of what use is that son who is neither learned nor morally good?

4. A son who has no sacred knowledge, nor courage, nor industry, nor devotion, nor liberality, and who observes not immemorial good customs, must be considered as similar to urine and ordure.

“Not virtuous” must be explained by the subsequent texts.

The *Retnâcara*.

It consequently signifies one destitute of good qualities, such as *the willingness* to discharge the debts of the father and the like.

“Not virtuous” is explained by RAGHUNANDANA, ‘tainted with those vices which are the reverse of good qualities.’ That is wrong; for the Sage, declaring useless a son devoid of good qualities, as described in the second text (CCCXIX 2), intimates, that

* See MENU, Chap. XI, V. 185.

† Also cited at V. 264.

that he is incapable of inheritance. A text of NĀREDA, bearing the same import, shall be cited.

By the word "though," the son of a woman unequal in class, and the substitute for a son, are assuredly excepted in *similar circumstances*. "Who offer the funeral cake *to the deceased*;" this phrase (*tat pindadāh*) is expounded in the *Retnācara*, who give food and apparel to this man who is devoid of good qualities. The inheritance and other rights therefore devolve on learned priests: it is also mentioned, that food and apparel must be allowed to this son who is destitute of good qualities. "Learned priests" are mentioned illustratively; the term comprehends any person who duly performs the obsequies and other constant and occasional rites. RAGHUNANDANA explains the term *tat pindadāh*, 'who offer the funeral cake to the deceased.' According to the *Retnācara*, 'highest and lowest debts' should be expounded "debts due to the superior beings, *such as* deities, sages, and progenitors; and those due to an inferior being, namely, man." According to HELĀYUDHA, the same terms must be explained, debts to a creditor, which are naturally degrading. By declaring him to be useless who neglects the duty mentioned in the text, that is, who wilfully omits to redeem his father, it is intimated that he is incapable of inheritance; for the law declares him alone entitled to possess the heritage who does confer benefits. The legislator mentions this, illustrating the principle by a simile (CCCXIX 3). "Learned" there signifies acquainted with right and wrong; "morally good" means practically virtuous. Here one who is acquainted with right and wrong, is compared to a pregnant cow; one who is practically virtuous, is compared to milch cattle. "Sacred knowledge, courage, and industry," (CCCXIX), severally relate to the three first classes; "devotion" and the rest concern all tribes. "Immemorial good customs;" the terms *may be explained* 'the practice of virtue to the utmost of his power.' "Must be considered as similar to urine and ordure;" as urine and feces are ejected through organs of *action**, so was he also ejected in the form of seminal juice. It follows, therefore, that a son, even though free from vice, who neglects to fulfil prescribed duties to the utmost of his power, is excluded from participation; else it were vain to pronounce him useless.

Vice

* See MENU, Chap. II, V. 91.

Vice *here* signifies malicious wrong to others and the like. May not the determinate sense of vice be here restricted to neglect of prescribed duties? then the opinions of RAGHUNANDANA and the *Retnâcara* would accord. It should be noticed, that deficiency of good qualities, as a cause of exclusion, signifies the neglect of *fulfilling* indispensable duties at the proper time and place; the same term, as used in the chapter on Sons of twelve descriptions, signifies neglect of voluntary acts of religion, which is a ground of inferiority in rank.

CCCXX.

NÂREDA:—A professed enemy to his own father, a degraded man, one deprived of virility, and a man formally expelled *by his kinsmen*, shall not inherit, though begotten by the deceased; much less if begotten on his wife by a kinsman legally appointed:

2. One afflicted with an obstinate or an agonizing disease, and one insane, blind, or lame, from his birth, must be maintained by the family; but their sons may take the shares *of their parents*.

He who hates his father, is a professed enemy to him: enmity is manifested by attempting his life and so forth; but after the death of the father, by withholding the libations of water and the like, *which should be offered* for his sake. “A man formally expelled;” one banished with the ceremony of *kicking down a water-pot*, for a crime *in the third degree*, such as killing a *Cshatriya without malice* or the like. “Obstinate diseases” are atrophy and the rest; “agonizing distempers” are leprosy and the like. These persons must be maintained or fed by the family, that is, by their brothers and the rest.

The *Retnâcara*.

The author of the *Pracâsa*, reading *upapâtaci* (sinner in the third degree), instead of *apapâtrita* (formally expelled), explains it guilty of crimes in the third degree. JĪMŪTAVĀHANA and RAGHUNANDANA read *aupapâtita*; that likewise signifies guilty of crimes in the third degree. In the *Calpateru*, the text is read *apapâtrita*.

apapātrita. The exclusion of one formally expelled or degraded by his kinsmen, is expressly ordained in the text of SANC'HA and LIC'HITA. A sinner in the third degree is only excluded from participation, in the case of repeated offences: crimes are therefore mentioned in the plural number. Degradation for a single offence only takes place in the case of more heinous crimes. "A professed enemy to his own father:" this accords with VRÍHAS-PATI; for, the exclusion of one who wilfully omits the performance of obsequies and the like is thus propounded. Though adorned with many virtues, such as liberality and the like, he is excluded from participation, if he refuse to perform obsequies and similar acts of piety. "Insane from his birth;" it is hereby intimated, that one who subsequently becomes insane from the pernicious power of mineral drugs, or the like, is not excluded, any more than one who subsequently becomes blind or lame. In the *Vivāda Chintāmeni*, the text is read "idiot (*ja'da*), insane, blind, or lame," instead of "insane, blind, or lame, from his birth (*janma*):" "idiot" is there explained, one who is incapable of discrimination. "But their sons shall take the shares of their parents;" consequently their sons shall participate as grandsons; or if these be also similarly circumstanced, their grandsons shall take the shares as great-grandsons of the deceased: but if these be likewise similarly circumstanced, no argument is hinted to prove the right of their sons (*who are great-great-grandsons of the late proprietor*) to take the shares of their parents. However, the son of a degraded man shall not participate.

CCCXXI.

DÉVALA:—On the death of a father, *or other owner of property*, neither an impotent man, nor a person afflicted with elephantiasis, nor a madman, nor an idiot, nor one *born* blind, nor one degraded for sin, nor the issue of a degraded man, nor a hypocrite or impostor*, shall take any share of his heritage.

2. For

* The term is explained by some commentators "a fraudulent wearer of sacred marks." T.

2. For such men, except those degraded, let food and clothes be provided; and let the sons of such as have sons take the shares of their parents, if themselves have no similar disability.

“On the death of the father;” the meaning is, even on the death of the father. “A hypocrite;” one who rigidly practises austerities with an intent to deceive. *The Retnâcara.*

Of course, sons have no right to the property of their father; it would therefore be superfluous to say “on his death:” hence the word “even” is supplied.

A person afflicted with elephantiasis, and who has not made expiation, is excluded from inheritance; but one who has made atonement shall take a share, since the sinful taint is removed; for that was the sole cause of his exclusion. This is accurate; and in like manner, a person afflicted with marasmus is only excluded if he have not made expiation. It should not be argued, that the disability of men tainted with sin is shown by the mention of persons degraded for their crimes: by the further mention of a “person afflicted with elephantiasis,” it is intimated, that the disease is, in its own nature, a cause of exclusion from inheritance. RAGHUNANDANA holds, that expiation for a man afflicted with elephantiasis, or other similar disease, is ordained for the purpose of enabling him to perform acts of religion ordained in the *Vêda*; by parity of reasoning, he becomes competent to inherit property, as well as to perform religious ceremonies: it is not found, in any other case, that a son competent to perform obsequies and other acts of religion is not qualified to inherit. The leper is separately mentioned to deny his right of inheritance; which might be supposed, because he is not a degraded person.

Although the sinful taint be diminished, is not a leper degraded because the *original* crime was heinous? It should not be objected, that the body in which the offence was committed is alone tainted with sin, and the occupant of that body is alone degraded; but the crime having been perpetrated in another body, the occupant of the present one is not degraded. There is no argument by which this induction can be supported. To the question

question proposed, the answer is, degradation signifies that state which occasions both disability for acts of religion ordained in the *Vēda*, and a *final* doom to misery in another world ; but leprosy does not occasion evil destiny in another world, nor does it cause disability for acts of religion : in fact, a man so tainted with sin ought not to undertake a religious rite, although elephantiasis and the like have not ensued.

Is not a known crime the sole cause of disqualification for acts of religion ? and hence they may be duly performed by one who is not conscious of a crime which he has fortuitously committed in his present existence. Again ; if leprosy be a cause of disqualification for religious ceremonies, why should it not occasion disability for inheritance ? As for the assertion, that, since the injunction of penance would otherwise be fruitless, he becomes equally capable of possessing property, and of performing acts of religion, (for there are no grounds of preference,) that is not accurate ; for nothing opposes the assertion, that penance is undertaken lest leprosy or the like ensue in a future birth.

The modern VÁCHESPATI BHATTÁCHÁRYA holds, that a crime in the first degree is inextinguishable so far only as relates to the body in which the crime was committed ; accordingly the observation of RAGHUNANDANA is accurate, that, since the cremation of a husband guilty, in his present state, of slaying a priest, is forbidden, one guilty of that crime, in a preceding state, is alone redeemed by his wife dying with him. If expiation were refused to all bodies occupied by one guilty of a crime in the first degree, then cremation would be denied to a man tainted with sin, even though it were committed in a former birth ; the observation of RAGHUNANDANA would be therefore inaccurate ; and a husband guilty of slaying a priest, *in a preceding state*, could not be purified by his wife dying with him. It should not be argued, that cremation is only permitted when the degradation is unascertained, the crime committed in a preceding state being unknown ; but cremation is refused when that is ascertained from elephantiasis, or other token of sin. As in the case of defilement, so in the present instance there is no argument for requiring *the previous ascertainment of the fact* : it is not true, that, if a man employ, in the celebration of a sacrifice, one who has committed a crime in the first degree which is unknown, a
sinful

sinful taint is not thereby contracted ; for, when many persons take a repast in company, it is directed by Sages that a line of separation be drawn with water, sand, or the like, through fear of associating with a degraded man. Nor should it be argued, that this is not RAGHUNANDANA'S opinion ; but his meaning is, that cremation is refused to one who is a known sinner ; and no sinful taint is contracted, if a sacrifice be performed by the intervention of one guilty of slaying a priest, but whose crime is unknown : the practice of drawing a line of separation is founded on the apprehension of associating with one who conceals a crime of which he is guilty. Were it so, the expression " in a preceding state " would be unmeaning. As for the exposition, which might be proposed, " a crime committed in a preceding state, which is concealed, is a sin of a preceding state, and one known in this life is a sin of the present state ; " that is inadmissible ; for it would be wrong to attribute to an author an implied meaning so ill justified. In like manner, adds VÁCHESPATI BHATTÁCHÁRYA, if the corpse of one who has committed a crime which is unknown be burnt, those who burn the corpse must be acknowledged to be guilty of an offence, as they are if they burn the corpse of one who has concealed his sin.

This again does not hold good : a thing cannot be justified on the sole consideration of any author's assertion, without *support from reasoning, or from the express text* of a legislator ; for the simple assertion of a commentator may be any-how applied. For instance : a priest is a human being endued with strength ; he is not slain by the simple imposition of hand or foot, without blow or wound ; and that must be known : hence, *to suppose an unknown offence*, it is necessary to revert to a former birth. It should not be objected, that no argument proves cremation to be forbidden then only when the sin is known ; and consequently expiation is denied to that body alone, by the occupant of which the crime was committed. To secure the effect of dying with a husband, namely, atonement for the crime of one guilty of slaying a priest, as it is necessary (this being an occasional rite) that the occasion of it be ascertained ; so likewise in a prohibited case, the cause, being ascertained, ought to be considered as a sufficient ground *for invalidating the act*. This really occurs in the case of one who takes a repast on the eleventh day of the moon,

not being aware of the date. It should not be argued, that no sin is committed *by such unintentional breach of an enjoined fast*. As merit is not *gained* by one who abstains from food on the night of SIVA *, without being aware of *that rigorous fast*; so a forbidden act, being done, produces the sin consequent on such act, although the cause *why it should have been omitted* were unknown. It is indeed declared, as an inference drawn from the texts of MENU and YÁJNYAWALCYA, that, although a crime be unatoned, an act done ignorantly is valid: hence the cremation of one whose crime was unknown is valid; but those who burn his corpse contract a sinful taint.

MENU:—The gods declared three pure things peculiar to *Bráhmanas*; what has been defiled without their knowledge; what in cases of doubt they sprinkle with water; and what they commend with their speech.

YÁJNYAWALCYA:—What is not known *to have been defiled* is ever pure.

If it be said, leprosy must also be affirmed to be a cause of disability for performing acts of religion ordained in the *Véda*; to disqualify one who does not know, through his acquaintance with the law, that this leprosy proceeds from a crime formerly committed; and, for the purpose of disqualifying one who is ignorant of the law, it is not necessary that some person should tell him, “it is inferred from this leprosy that a crime was committed by thee in a former state;” then the answer is, admitting that leprosy is also a cause of disability, what difficulty follows? what prevents a sin ascertained by leprosy, or the like, becoming the cause of disability for performing acts of religion ordained in the *Véda*? VÁCHESPATI BHATTACHÁRYA, who contends that atonement is denied to that body in which a crime in the highest degree was committed, only admits that a body infected with sanious leprosy, which is a token of a heinous crime, cannot obtain atonement. *But* if the sinful taint be removed, that consequence

* On the 14th lunar day of *Phálguna*.

sequence is obviated. The following text declares sanious leprosy to be the worst sort :

CCCXXII.

Bhāṣya purāṇa :—Hear, O priest ! the enumeration of various sorts of leprosy, the last worst than the first : blisters on the feet, a deformity in the generative organs *, cutaneous fissures, true elephantiasis, ulcers, coppery blotches, black and (eighthly) white leprosy.

3. Among these, that leper is most vile, in respect of all religious acts, who is afflicted with ulcers on all his limbs, *especially* on his temples, forehead, and nose.
4. When he dies, let his corpse be cast near a sacred river, or other holy place, or at the root of a sacred tree ; let not a funeral cake or libation of water be offered, nor his corpse be burnt, nor obsequies be celebrated.
5. Should a man through affection burn the corpse of a leper, who has been six or even three months infected with the disease, that man must perform the lunar penance of an anchorite †.

Among those lepers of eight sorts, he who is incapacitated for all solemn rites is described (this word must be supplied) as afflicted with ulcers in all his limbs, or on his temples, forehead, or nose. Since this is merely illustrative, he who is infected with that foul leprosy which is attended with ulcers on any other part of the body, is abominated, *and disqualified* for all solemn rites. Or the term “on all his limbs,” being employed by the same rule by which two names for kine are used at once

x 3

in

* See MENU, Chapter xi. V. 49. *Duscherman*, the term which occurs in the text, is explained as signifying the natural want of the foreskin.

† MENU, Chapter xi. V. 219.

in a general and particular sense, the meaning is, “on any part of the body, whether the temples and the rest, or parts different therefrom.” Or else the meaning may be, ‘afflicted with ulcers on any one or more of all the parts of the body, or especially with those other ulcers called coppery, black, or white sores, on any one of the parts specified, namely the temples and the rest: he who is afflicted with any one of these diseases is *most abominated*.’ “A leper who has been six or even three months infected with the disease, &c.” according to the first opinion, if lepers die who had been six months afflicted with *one of* the other seven sorts, or three months infected with sanious leprosy, their bodies shall not be burnt; and, *if they live*, they become incapable of inheritance. Or the meaning is, ‘after three months, if the sanious leprosy spread over all the limbs; after six months, if it only invade the temples or the like.’ Or the sense may be, ‘after six months, if the sanious leprosy invade any part of the body in general; after three months, if it consist in a coppery fore or the like, which especially attacks the temples and other parts mentioned *in the text*.’

It is said, that, the sinful taint being removed after penance performed, the degradation of the leper would be set aside: neither RAGHUNANDANA nor SÚLAPÁNI have inferred, from the separate mention of the leper, that his corpse shall not be burnt, although he had performed penance. The unfitness for cremation after death being *thus* removed, he therefore becomes competent to perform acts of religion *during his life*; and this being proved, his right of inheritance is likewise established by parity of reasoning; and the leper is again expressly mentioned by the same rule by which two names for kine are at once employed in a general and particular sense: since his degradation can only be inferred *by logical reasoning*, men of weak understanding would not readily apprehend it; the *leper is therefore separately mentioned*, to assist ready apprehension. The same must therefore be understood in respect of obstinate agonizing diseases (CCCXX). The opinion of RAGHUNANDANA and the rest cannot be impugned on the sole ground of the leper being separately named. As for what is affirmed, that although the sinful taint proceed from the murder of a priest, or other heinous crime, it is diminished by long endurance, and is therefore no cause of degradation; and hence

hence the leper is separately mentioned, because he cannot be included in the term "degraded man:" (to which it should not be objected, that although the sinful taint be diminished by long sufferance, the nature of the taint remains *unaltered*; and RAGHUNANDANA is accurate in admitting, that bodies of men who had black teeth, or other corporeal marks of sin, must not be burnt; were it so, it would be necessary to perform the penance of twelve years *:) that is wrong; for legislators have propounded penances *equivalent* to the sufferance of such pains as would be produced by that sinful taint; and in the interval, when much has been already suffered, a penance equivalent to such part as remains to be endured. "Degraded man" must be explained 'one who has done a criminal act;' else, since the issue of an outcast may be sufficiently described by the simple term "degraded," the expression "issue of a degraded man" would be superfluous. But this man (the leper) is not one who has done a criminal act; for it was not done by *him* in his present body. If it be argued that disability must be affirmed of him who is tainted with the sin consequent on that act, lest the offender become capable of possessing *inherited* property when two days have elapsed after the murder of the priest, or other crime committed, since the act itself is not of long duration, then the son of the leper would be also disqualified. Therefore the occupant of the body, by which a criminal act was committed, is alone disqualified by reason of the sinful taint arising from an act of the body; and the leper is separately mentioned to suggest disability so long as the sinful taint remains, although he occupy a different body. Then a man who has black teeth or the like would be capable of inheritance, and so forth, even though penance have not been performed; and if this be deemed admissible, one who is afflicted with slight elephantiasis being disqualified, *though he be not* a greater sinner than one who has black teeth, would not this be an unjust disparity? By the word leper must be understood one infected with the sanious kind; a man afflicted with slight leprosy, and one who has black teeth and the like, retain their right of inheritance, and so forth: accordingly the man who is infected with a particular sort of leprosy, being alone described

x 4

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* MENCU, Chapter xi. V-73.

in the *Bhawishya purāna* as an abominated person (CCCXXII 3), the denial of cremation must be understood of him alone. It should not be objected, that a man infected with grievous leprosy is disqualified under the authority of the text, although he have performed penance, since no argument exists by which it can be proved that the term “a person afflicted with elephantiasis” (CCCXXI) bears the secondary sense of “tainted with sin.” If one who laboured under the full taint of sin regain his rights when he has performed penance, and one who labours under the remains of such sinful taint be disqualified, although he have performed penance, the disparity would be unjust. Not the disease, but the sin alone is the cause of disability. This is stated on the authority of the opinion delivered by VĀCHESPATI BHATTĀCHĀRYA.

According to RAGHUNANDANA, they who have black teeth and the like, as well as he who is afflicted with slight elephantiasis, (should penance be unperformed,) can neither be burnt *after their decease*, nor succeed to property *during their lives*; for these also are sinners in the first degree, and the text expresses,

CCCXXIII.

Brahme purāna:—They who have committed crimes in the first degree, are considered as degraded persons.

Would not the son of a leper, born before the disease broke out, be disqualified as the issue of a degraded man? Say not, that is admissible; for it would be inconsistent with approved usage. Nor should it be affirmed, that in this place “degraded man” signifies one tainted with a sin in the first degree; but in the expression “issue of a degraded man,” it signifies the occupant of that body whence the sinful act proceeded. There is no argument on which various senses can be established for the word “degraded” twice used in the same sentence (CCCXXI). If this be proposed, the answer is, No; for, in both instances, the term degraded relates to the occupant of that body whence the sinful act proceeded. For this reason only is the leper separately mentioned; and thus, after premising degradation (CCCXXIII),
the

the cremation of outcasts being forbidden in the *Brahme purāna* (CCCXXIV), the cremation of lepers is consistently forbidden in the *Bhawishya purāna* (CCCXXII), as they are outcasts. Degradation there signifies the state of one guilty of a crime in the first degree, and so forth. Consequently, cremation and the like being allowed to one who has performed penance, since he is no longer an outcast, the performance of prescribed acts of religion, such as obsequies and the like, is also deduced; and that being proved, his right of inheritance is also established.

CCCXXIV.

Brahme purāna :—Of degraded persons there shall be no cremation, nor funeral sacrifice, nor gathering of their bones.

By parity of reasoning, should not one who has black teeth or the like, and by whom penance has not been performed, be incapable of inheritance? but that is not declared by the text; his exclusion from inheritance is intimated by NÁREDA (CCCXX 2). 'SÁTÁTAPA has used the word "malady," which is synonymous with disease, as also signifying black teeth and other morbid changes.

CCCXXV.

'SÁTÁTAPA :—The morbid mark proceeding from a heinous crime is reproduced in seven successive births: *the right of inheritance* is obstructed by malady; but that is removed by the first or common penance and the like*.

2. And so is leprosy, marasmus, gonorrhœa, and dysentery.

Any

* *Cric'hra*; MENU, Chapter xi. V. 209 and 212, (see also 125.) The term very frequently occurs in that Chapter, and is translated severe; but, taken as the name of a particular form of penance, it seems to be the same with that of PRA-JA'PATI.

Any mark proceeding from a heinous crime is thus described as malady or disease. VISHNU also mentions black teeth as the mark of a sin in the first degree.

CCCXXVI.

VISHNU:—They who have suffered the pains experienced in hell, and have passed through the reptile state, bear the marks of *their yet unexpiated crimes* in the human form; an atrocious finner becomes leprous; the slayer of a priest is afflicted with marasmus; a drinker of spirits has black teeth; a stealer of gold has whitlows on his nails; the violator of his preceptor's (*guru*) bed has a deformity in the generative organs.

In the text of DÉVALA the word “elephantiasis” is illustrative of these *morbid changes*; for, in texts which will be quoted, it is expressed by the general term ‘disease’ or ‘malady.’ Then a man afflicted by gonorrhœa, or dysentery, would be also disqualified. Gonorrhœa, dysentery, and the rest, may also proceed from the pernicious effects of drugs; but if they be ascertained to be the marks of an atrocious crime, or of sin in the highest degree, disability is admitted by the terms of the text of NÁREDA (CCCXX 2). It is the same in the case of one who becomes insane in the course of his life. It should not be objected, that the special mention of him who is afflicted with ulcers (CCCXXII 3) would be superfluous. The distinction is this, men afflicted with very slight elephantiasis and the like are competent to perform the constant rites; but one infected with grievous leprosy is not capable of performing them.

To reconcile the discordant opinions of many wise persons concerning the competence of a leper *to inherit and to perform acts of religion*, various modes have been exhibited. But, according to both opinions, a man infected with grievous leprosy is in effect capable of inheriting when he has performed penance: according to RAGHUNANDANA and others, men afflicted with elephantiasis, marasmus, honey-coloured gonorrhœa, black teeth,

and other distempers difficultly cured, are incapable of inheritance so long as penance be unperformed: according to VÁCHESPATI BHATTÁCHÁRYA, they are capable of inheritance. BHAVADÉVA holds, that a leper who has not performed penance is excluded from succession. This brief exposition may suffice.

“A madman,” in the text of DÉVALA (CCCXXI), signifies one insane from his birth; for the import is the same with that of the text of NÁREDA (CCCXX 2). RAGHUNANDANA explains “idiot,” one who cannot support the performance of duties: others explain the term, void of understanding. “Blind,” signifies born blind; for it coincides with the text of NÁREDA. One degraded for sin is he who has slain priests, or committed some other atrocious crime, and who has not performed penance, *but, on the contrary*, is averse from it; for RAGHUNANDANA says, aversion from penance on the part of the fallen sinner contributes to the forfeiture of his right to his own property. His not being averse from penance contributes to his right in the paternal estate. But VÁCHESPATI BHATTÁCHÁRYA affirms, that ‘aversion from penance is no cause of forfeiting his right in his own estate; penance, or other atonement, which legalizes his claim to property, can only be performed with money begged, during his fallen state, from his son, or from some other person. It is not proper to affirm, that his property in wealth acquired during his fallen state is forfeited by reason of his degradation. A degraded sinner would be always compelled to rob for his subsistence. However, should the son or other person take the heritage, and yet refuse to give money for the penance *to be performed*, he ought to be compelled to give it.’ According to his opinion, the matter is not in this case regulated by aversion from penance.

“The issue of a degraded man;” issue born after the commission of the act, which is punished by degradation; for this agrees with the text of VISHNU (CCCXXVII). A hypocrite or impostor is explained, in the *Retnâcara*, one who rigidly practises austerities with a fallacious intent.

CCCXXVII.

VISHNU, after premising the fallen sinner, the eunuch, and the rest :—The legitimate sons of these *are sharers of the patrimony* ; but not the sons of a degraded man, born after the commission of the act which is punished with degradation, nor those who are procreated in the inverse order of the classes : their sons do not participate even in the property left by the paternal grandfather.

“ Of these ” persons above mentioned, the legitimate sons (that is merely illustrative, for the eunuch can have no son of his body,) are sharers : the sense must be so completed. The legislator excepts the offspring of an outcast, “ but not the sons of a degraded man, &c.” “ Nor those who are procreated in the inverse order of the classes,” by a man of the military or other lower class, on a wife of the sacerdotal or other higher class ; or by a *Brāhmaṇa* on a *Cshatriyā* wife, espoused subsequently to his marriage with a *Vaiśyā* one, and so forth.

The legislator also declares their offspring unentitled to participation : “ their sons, &c.” “ Property left by the paternal grandfather : ” this is merely illustrative, say some lawyers, and it includes wealth left by the great-grandfather. But others affirm, that their grandsons have a claim to the estate of the paternal great-grandfather, because the text *only* expresses “ property left by the paternal grandfather.” It should be considered, that no argument exists on which the secondary sense can be assumed.

CCCXXVIII.

BAUDHĀYANA :—Persons incapable of transacting business, blind men, idiots, those who are immersed in vice, or afflicted by *incurable* diseases, and *even* those who neglect their duties, (but not the degraded nor their issue,) let the heirs supply with food and apparel.

“ Persons

“ Persons incapable of transacting business ;” not become capable of civil transactions. The *Retnâcara*.

The terms may be also explained, neglecting civil affairs, and solely devoted to acts relative to another world. “ With food and apparel ;” according to the *Retnâcara*, *this shall be supplied out of their own allotments committed to kinsmen in trust for their use*. “ Blind men ;” persons born blind. “ Those who are immersed in vice ;” the term (*vyasana*) is explained by AMERA, danger or calamity, falling low or erring, vice proceeding from lust or wrath : consequently the heir must support those who have fallen off from their duty, that is, who are addicted to gaming and the like ; and such as are impelled by vice proceeding from lust, that is, addicted to the frequentation of courtesans ; and those who are impelled by vice proceeding from wrath, or who always design mischief to others : it follows from the maintenance ordained, that they shall be excluded from participation.

The *Brahme purâna* expressing *that* irreligious impostors, and those whose minds are perverted, *shall not be burnt* ; and RAGHUNANDANA expounding the last term as signifying those who maliciously injure others ; it is established, that to such as are malignantly mischievous, cremation shall be refused ; it is therefore reasonable that they should be excluded from inheritance. “ Afflicted by *incurable* diseases ;” by elephantiasis or the like. “ Those who neglect their duties ;” or who are disqualified for acts of religion, such as sacrifice or the like. Thus a *similar term is used in the following verse* :

Wealth is conferred for the sake of defraying sacrifices ; therefore distribute it among honest persons for that purpose, but not among women, ignorant men, or such as neglect their duties*.

“ Ignorant ;” unacquainted with the *gâyatri* ; not knowing the sense of that prayer. RUDRADHARA.

“ One who neglects his duties ;” one who performs not the ceremonies enjoined at morning and evening twilight, and at noon, nor other daily acts of religion : a woman is disqualified for sacrificing

* See Chap. VIII. (V. ccccxiii).

crificing, because she is incapable of sacred knowledge. The legislator declares an ignorant man, and one who neglects his duties, incompetent to sacrifice.

Him who neglects solemn rites, the ignorant man, one who is afflicted by a grievous malady, and one who acts according to his mere pleasure, the wife have declared impure even until death.

Consequently, by declaring them impure until their death, it is intimated that they are unfit for celebrating a sacrifice, for which purity is required.

But JÍMÚTAVÁHANA reads *acarmacarminah* "those who practise what is inconsistent with duty," instead of *acarminah*, "those who neglect their duties:" according to his opinion, persons addicted to gaming and the like are intended by that term. "But not the degraded, nor their issue;" thus, excluding outcasts and their offspring from supplies even of food and apparel, it surely follows that they are deprived of their shares.

CCCXXIX.

MENU :—Eunuchs and outcasts, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage ;

2. But it is just that the heir who knows his duty should give all of them food and raiment *for life* without stint, according to the best of his power : he who gives them nothing, sinks assuredly *to a region of punishment*.
3. If the eunuch and the rest should at any time desire to marry, *and if the wife of the eunuch should raise up a son to him by a man legally appointed, that son, and the issue of such as have children,* shall be capable of inheriting.

"Persons

“Persons born blind:” by the mention of birth the legislator suggests the incurableness, not the origin of the blindness. “Idiot;” devoid of knowledge of himself and others. By the mention of “such as have lost the use of a limb,” persons lame or the like, who are disqualified for acts of religion ordained by revealed and memorial law, are suggested. To all these, namely, to eunuchs and the rest, food and raiment must be given without stint as long as they live. “If the eunuch and the rest should at any time desire to marry:” this apposition is in the form called *bahubrihi*, not however connecting the attribute or proposition with each member of the compound term; for the eunuch is incapable of procreating offspring. But the author of the *Pracāsa* considers “impotence” as determinately signifying incapacity of propagation, arising from a defect which may hereafter be removed: he does not therefore acknowledge the apposition to be that form of *bahubrihi*, which connects not the attribute with each member of the compound term. Thus far the *Retnācara*. The meaning is, as persons afflicted by a hopeless malady must be supplied with food and raiment, so must he who is afflicted by incurable blindness, and so forth. That is not the opinion of CULLŪCABHATTA; for he expounds the text, ‘eunuchs, fallen sinners, persons born blind, or devoid of the sense of hearing, madmen, those who support not the performance of duty, and such as are deprived of speech.’ JĪMŪTAVĀHANA says the word “born” is connected both with “blind” and with “deaf.” In expounding the text of DÉVALA above cited (CCCXXI), he says “blind” signifies born blind; for this coincides with the expression “born blind or deaf” in the text of MENU. In practice, the succession of one who becomes deaf in the course of his life occurs, even though the deafness be incurable: the same is also proper in a case of blindness. Consequently the term must be understood as signifying one born blind, or born deaf. It is expressly declared by NÁREDA (CCCXX). “Idiots:” through want of knowledge, not through absorbed contemplation of the divinity (*in which state a man is wholly insensible to every occurrence, and might therefore come within the definition of idiot*). “Such as have lost the use of a limb;” not such as have lost any organ generally, (for that would include a vain repetition of the terms blind and deaf;) but such as have lost the use of some one limb; for example,

ple, wanting the use of a hand, or of a foot. The repetition of "blind" and the rest may be supposed by the same rule by which two names of kind are at once employed in a general and particular sense. "Wanting the use of a foot" in effect signifies lame.

The construction of the second text (CCCXXIX 2) is this: it is just to give all of them, namely eunuchs and the rest, food and raiment for life. From the conclusion of the second verse (CCCXXIX 2) it must be inferred, that he who does not willingly give *food and raiment*, shall be compelled to give it. The use of supposing an apposition in that form of *bahubríhi* which connects not the attribute with each member of the compound term, is, that the word to which the term "and the rest" is subjoined, may not be included in the apposition: hence the meaning would be, 'if the rest, excluding the eunuch, should desire to marry.' But that is questionable; for MENU declares that an eunuch may adopt a son begotten on his wife duly authorized (CCXXXI*), and BAUDHÁYANA has delivered a similar text (CCXXXVII). According to the author of the *Pracáśa*, this law (CCCXXIX 3) regards one who becomes impotent in the course of his life. That is questionable; for, as one who becomes blind in the course of his life ought to share the heritage, so ought one who becomes impotent. As it is recorded in the *Bhárata*, that SIC'HAN'DINÍ, daughter of DRUPADA, did espouse a wife†, so it may likewise happen that an eunuch, mistaken for a man, may contract a marriage. Impotence is of two kinds: the impotence of one who is deprived of the generative organ, and the incapacity of doing the virile act, although the generative organ exist. The last is described by CÁTYÁYANA:

CCCXXX.

CÁTYÁYANA:—He is called impotent whose urine
froths

* The compiler has cited the commencement of another text in MENU's name. I have made the reference to a similar text of MENU. T.

† DRUPADA, during his wife's pregnancy, vowed he would kill the child should it prove female: his wife, to save her infant, imposed SIC'HAN'DINÍ on her husband for a son. A fable is told of her exchanging sexes with a *Yacsha*, or benevolent genius. T.

froths not, whose feces sink in water, and whose generative organ is deficient in erection or in seminal juices.

Although the eunuch and the rest should not marry, they may adopt children, such as sons given and the rest; and therefore the phrase "if they should desire to marry" is exceptionable. If the degraded sinner have a wife married before he became an outcast, the son of his wife, or other male child adopted during his degradation, and the son of his body procreated before it, may claim shares of the heritage; as appears from texts of DEVALA and others above cited.

CCCXXXI.

YĀJÑYAWALKYA:—An outcast and his son, an eunuch, one lame, a madman, an idiot, one born blind, and he who is afflicted by an incurable disease, must be maintained without any allotment of shares.

"His son," procreated after his degradation. "An idiot;" one whose intellectual faculties are imbecile. "An incurable disease;" a hopeless leprosy and the like. By this term "and the like," other persons, described by other Sages as excluded from participation but entitled to maintenance, should be comprehended in this law.

The Retnâcara.

He who cannot walk on either foot, says JĪMŪTAVĀHANA, is lame. According to his opinion, if one foot can be used in walking, there is no true lameness. He who cannot walk on both his feet, say modern lawyers, is lame. According to their opinion, if both feet can be used in walking, then *only* is there no lameness: consequently a man is called lame, even though he can move on one foot. The opinion of JĪMŪTAVĀHANA is alone correct; for, in the text of MENU, the general failure of organs is not signified by the expression "such as have lost the use of a limb," (literally such as have not *their* organs:) were that the meaning, one who had only lost the use of his hands would be capable of inheriting. Logicians do not acknowledge any essen-

tial property common to all organs and peculiar to them : hence a general failure of them *all* cannot be affirmed by a single term ; but the general failure of a particular one *may be so affirmed*. That may be the total failure of *power to use* the hands or feet ; the total failure of the sense of smelling or tasting ; the deprivation of sight, *which constitutes* blindness ; deprivation of hearing, *which constitutes* deafness ; the total failure of the generative organs, *which is called* impotency ; dumbness, or the total failure of speech, which depends upon the tongue : if the organ of excretion were totally deficient, life would cease through the suppression of dejections. An organ is a certain thing affixed to its proper place, namely to a lump of flesh (or part of the body). Accordingly the virile act cannot be performed if a certain thing so denominated be wanting in the virile member ; and so in respect of others. Consequently, if the man have the use of one hand, or of one foot, there is no general failure of those organs respectively. Again ; since the purport is the same with that of the text of MENU, the same must be likewise understood in this instance from the term “lame.” In practice, he alone is deemed so who cannot move even one foot.

“Blind” signifies born blind. So the *Dīpacalīkā*. It should here be remarked, that the term “lame,” being contiguous to the word blind, must signify born lame. In like manner, “persons deprived of the use of their hands” must signify such as are destitute of the use of both hands from the day of their birth. By “the virile member” is not meant the organ of discharging urine, but *that member considered as the instrument of procreation* ; as is expressed in the *Srī Bhāgavata*, “the parts of generation are distinguished by the sense of pleasure in the act of propagation.”

According to their CCCXXXII.

YÁJNYAWALKYA:—But their sons, whether begotten in lawful wedlock, or procreated by a kinsman on the wife duly authorized, may take shares, provided they have no disability.

On this text commentators remark, that two sons of lepers and the

the rest, namely, one legally begotten, and one produced by a wife duly authorized, but not their other sons, are capable of inheriting. That is not satisfactory : for the issue of an appointed daughter, the son given, and the rest, are faultless ; and the offspring of the wife, and the son legally begotten, are not specially mentioned in the texts of MENU and the rest. It should not be argued, that no ground of preference exists whether the text of MENU shall be restricted as bearing the same import with the text of YÁJNYAWALCYA, or this be considered as exhibiting instances which elucidate the meaning of the other.

CCCXXXIII.

VRĪHASPATI :—MENU holds the first rank among legislators, because he has expressed in his code the *whole* sense of the *Véda* ; no code is approved which contradicts the sense of *any law promulgated by MENU*.

Still, as the general term “ issue,” which occurs in the expression “ the issue of such as have children shall be capable of inheriting,” and which might be construed as declaring their daughters to be also competent to inherit, is explained male offspring, from the coincidence with texts of other legislators ; so may not the same term be explained (from the concurrent import of the text of YÁJNYAWALCYA), as signifying male issue, either begotten in lawful wedlock, or procreated by a kinsman on a wife duly authorized ? No coincidence with texts of other Sages, but with another law promulgated by the same legislator, is the ground on which “ issue ” in the text of MENU is explained male offspring : for, when partition of the father’s estate is made by his children, it appears from the text, “ Either let them (“ brothers ” had been premised) thus live together, &c.” (XVIII), that the division shall be made by his male children ; surely the same appears when the estate of the paternal grandfather is divided. “ Sons procreated by a kinsman on a wife duly authorized,” being mentioned in the plural number, must be understood to signify “ and the rest ;” for it is recorded, that, when the enumeration ends with a term

in the plural number, it suggests others of the same *set*. “Provided they have no disability;” that is, provided they are free from defects which cause exclusion from inheritance, such as blindness, deafness, and the like. “They may take shares;” not a mere maintenance.

CCCXXXIV.

YÁJNYAWALCYA :—Their daughters must be supported so long as they be not disposed of in marriage :

2. And their childless wives, who preserve chastity, must be supplied with food and apparel; but disloyal and traitorous wives shall be banished from the habitation.

Since it is directed that daughters must be supported so long as they be not disposed of in marriage, it appears that the nuptials shall be defrayed, and that if no share be received by a son; but if the son do take a share, his sister must be supported, and her nuptials defrayed by him alone, as *is done in common cases* by a son whose father is dead. He alone must likewise support his own father, *who is disqualified*. Even an eunuch may have a daughter begotten on his wife by a kinsman; but no text of law is found to prove that he may have one received in donation or the like.

The legislator mentions “childless wives,” alluding to the married wives of eunuchs and the rest. So the *Retnâcara*. It is there supposed that the female slaves* and the rest need not be maintained: “their,” or of them, is considered as the sixth case denoting connexion by marriage. But, in fact, when the wife and daughters of the eunuch are supplied by his brothers with food and apparel, his male and female slaves ought likewise to be maintained by them. Twice-married women, and other adulterous wives, however they became so, shall not be supported. “Traitorous wives:” this term, according to the *Retnâcara*, positively denotes treason, such as the attempt to administer poison or the like;

* The translation does not preserve the ambiguity of the text. The word which is here translated wife, has the same import with the French *femme*; and might signify any woman appertaining to the eunuch, even a female slave or servant. T.

like ; not merely a contentious spirit. Consequently the same married wife, who ought to be banished from the habitation by her husband, shall in like manner be expelled by his brothers and the rest.

CCCXXXV.

GÓTAMA :—An idiot and an eunuch must be supplied with food and raiment, but the offspring of an idiot may claim a share : like issue by a 'Súdrá, sons begotten in the inverse order of the classes *shall receive a provision for their support.*

From the term "claim" it must be understood as made evident, that, if he is the heir, on the death of the paternal grandfather, then only shall he take a share ; this son of an idiot shall not participate while his paternal grandfather lives. "Like issue by a 'Súdrá ;" that is, like a son by a 'Súdrá not legally espoused : consequently a mere subsistence shall be allotted to him ; but if there be no other heir, he shall receive a share : hence, like issue by a 'Súdrá, sons born of women married in the inverse order of the classes, shall, if strictly obedient, have a provision for their support ; *that is, a maintenance similar to that which must be given to the son by a 'Súdrá.* The *Retnâcara.*

But the son by a 'Súdrá may take a single share by the texts of MENU (CXXXIX 4) and YÁJNYAWALCYA (CXLII) : were the same admitted in the case of the son produced by a woman married in the inverse order of the classes, it would contradict the rule of VISHNU.

CCCXXXVI.

VISHNU :—Sons begotten on a woman *married* in the inverse order of the classes, are no sharers of the heritage.

CCCXXXVII.

CÁTYÁYANA :—The son of a woman not taken in marriage

marriage according to the order of the classes, or of one related by blood (*sagbtra*) to her husband, and a man who has assumed the order of a religious anchoret, are never capable of inheritance.

2. However, the son of a woman not taken in marriage according to the order of the classes may be heir, provided he belong to the same tribe with his father; and so may he who is born of a woman unequal in rank, but taken in marriage according to the order of the classes.

3. The son of a woman who bears children to a husband married in the inverse order of the classes, shall not participate in the heritage; but food and apparel must be given him without stint by his kinsmen.

4. On failure of collateral heirs, he may receive the paternal estate; and kinsmen shall not *in other cases* be compelled to give him *food and raiment* out of any property not inherited from his father.

“The son of a woman not taken in marriage according to the order of the classes;” that is, a son begotten by a priest on a young woman of the military or other tribe, married in breach of that order which is prescribed by the law when damsels of various classes are espoused *by one man*; that son is not capable of inheriting.

The son of a *Bráhmāna* by a *Bráhmaní*, or of any other man, by a woman of his own tribe, not married according to the order of the classes, inherits his estate; as is declared by the text (CCCXXXVII 2). The son of a *Bráhmāna*, or other man of *superior class*, by a *Cshatriyā*, or other woman of *inferior tribe*, taken in marriage according to the order of the classes, is capable of inheriting, though, strictly speaking, unequal in rank; as is declared in the same text. The son of a woman superior in class, but married to a man of a lower tribe, is not capable of inheritance; as declared in the subsequent verse. “But food and apparel

parel must be given him:" if there be kinsmen, they must give food and apparel; but if there be none, he himself may take the paternal estate: if the wealth left by his father be not received by kinsmen, (the negative *a* in this phrase, "*apitryam tad d'hanam prāptam*," is referred to the word *prāptam* received; for *a*, *mā*, *nō*, and *nā*, are terms of negation): then food and apparel need not be given. In the text, "the same tribe" is referred to the term "with the father;" in the sequel of the same verse, the construction is, "he who is born of a woman unequal in rank, but taken in marriage according to the order of the classes, may be heir."

Again; a son who is born of a woman descended from the same primitive stock with her husband, is not capable of inheritance: neither is a man who has assumed the order of a religious anchoret, even though he quit it to resume the order of a housekeeper. Such is the mode of interpretation approved in the *Retnācara*. Even though he remain in the order of a religious anchoret, he does not receive the heritage in right of its having belonged to his father. That VAŚISHT'HA declares:

CCCXXXVIII.

VAŚISHT'HA:—Those who have assumed another order, are excluded from participation.

Another order than that of a housekeeper or *married man*.

The *Retnācara*.

"The son of a woman related by blood to her husband (as claiming descent from the same primitive stock), *is not capable of inheritance*;" by parity of reasoning, the son born of any mother, who ought not to have been espoused, *is disherited*. That is a mere instance of a general meaning; the sons of a young woman sprung from the same derivative stock* with her husband, or related to him within the seventh degree *on the father's side*, or within

* *Pravara*; the subdivision of *gōtra*. Having translated *gōtra* primitive stock, I interpret *pravara* derivative stock. In the eighth chapter I translate *sagōtra* descendant from the same ancient sage, and *samāna pravara* sprung from the same branch of a venerable stock; adopting those terms from a note of Sir WILLIAM JONES, on a text cited in the *Vivādārnava śetu*. T.

within the fifth degree *on the mother's side*, are excluded from participation.

Then, would it not follow, that a son begotten by her husband, after the solemnity of marriage, on a young woman whose seasons had commenced before marriage, should be excluded from inheritance (*for such a woman ought not to be espoused*)? It should not be answered, that, in respect of women sprung from the same derivative stock and the like, an exception, (by which term is meant negation relative to that with exclusion of which the rule of action has been settled;) is deduced by parity of reasoning from the text of MENU (Book IV, V. clxxxv 2), and from others of the same import, such as this, "let not a man espouse a wife sprung from the same primitive or derivative stock with himself:" and in an excepted case the act is illegal *and void*: consequently, since the marriage of a woman sprung from the same primitive stock and the like is void, her son is excluded from inheritance; but a woman whose seasons have commenced, not being *so* excepted, her son shall partake of the heritage. We reply: a woman who has arrived at puberty, is also excepted by the following text:

A man aged thirty years may marry a girl of sixteen, whose seasons have not commenced.

AMERA states the term which occurs in this text (*nagnicā*) as synonymous with *anāgatārtavā*, which signifies, "a girl whose seasons are not come."

It should not be argued that the text, "a man may marry a girl whose seasons have not commenced," relates to proper marriages in a moral view; for, on the subject of a marriage with a young woman who has arrived at puberty, a censure is delivered: "Consider him as the lord of a *Sūdrā* wife, as one for whom obsequies must not be performed, and with whom none should associate:" it is not intended, by the text above cited, to declare void the marriage of a young woman whose seasons had commenced. Many Sages have also declared it an offence to marry a woman sprung from the same primitive stock and the rest: it might be affirmed in like manner, that marriage with a woman
not

not sprung from the same primitive stock is morally right, *and that the reverse is not civilly wrong*. To the question proposed some reply, it is admissible. But others say, in practice it is observed, that a son born of a marriage with a woman who had arrived at puberty, does obtain a share of the heritage : therefore, marriage with a woman sprung from the same primitive stock is void ; but with a girl whose seasons have commenced, it must be deemed valid, like marriage with a *Ṣúdrá*. Accordingly, Sages direct the repudiation of a woman sprung from the same original stock with her husband, who had been espoused by mistake, if the affinity be afterwards discovered.

CCCXXXIX.

SUMANTU :—He who marries the daughter of his father's or of his mother's sister, or of his maternal uncle, or a girl sprung from the same primitive stock with his mother, or descended from the same ancient Sage *with his father*, must perform the lunar penance, and, divorcing that wife, must support her.

CCCXL.

BAUDHÁYANA :—He who inadvertently marries a girl sprung from the same original stock with himself, must support her as a mother.

“ Descended from the same ancient Sage,” in the text of SUMANTU, signifies sprung from the same primitive or derivative stock. Legislators have not ordained repudiation in the case of a woman *espoused* after her seasons had commenced ; consequently, since no divorce takes place, he is bound to approach her in due season : hence the production of offspring by such a wife is legal, and the son shall therefore take a share of the heritage. Since *ṢÚLAPÁNI* remarks in the *Prāyaschittavivēca*, that the allusion to women sprung from the same primitive or derivative

derivative stock, in the text of SUMANTU, is a mere instance of a general meaning, and since RAGHUNANDANA concurs in that opinion, must not a woman espoused after her seasons had commenced be also repudiated? No; for the implied sense is, any woman who ought not to be married by reason of affinity.—Again; since the repudiation of a young woman bearing the same name with the mother of her husband, is also directed in the hymn to VISHNU assuming the form of a fish*, it must be understood, say these lawyers, that her son shall be excluded from inheritance. It should be remarked, that since the marriage of a *Sûdra* with a woman sprung from the same primitive stock is authorized, the son born of such a marriage is capable of inheriting.

“The son of a wife not authorized to have issue by another, and the son begotten by the brother of the husband, on a wife who has a son then living, are both unworthy of the heritage” (CCXXXIV); the son who is begotten on a wife not authorized by spiritual parents, on failure of the husband, is unworthy of a share in the heritage of her husband, or of his own natural father. “Even the son of a wife duly authorized, not begotten according to the law *which has been propounded*, is unworthy of the paternal estate” (CCXXVI).

CCCXLI.

GÓTAMA:—A son begotten by another on a woman whose husband's brother is living, shall not take a share of the heritage.

Issue begotten by another, although the husband's brother be living, is not capable of inheritance. *The Retnâcara.*

CCCXLII.

NÁREDA:—Those who are begotten by one, or by several fathers, on a woman not authorized to have issue by another, are all unworthy of the heritage;

* The *Matsya-sûcta*, a hymn extracted, I believe, from the *Vêda*. T.

age; and they are sons of their natural fathers only:

2. They may offer the funeral cake to their natural father, if their mother were obtained for a price paid to her husband; but if she were not purchased, they shall offer the funeral cake to her husband alone.

“On a woman not authorized to have issue by another;” on a disloyal wife. “They are unworthy of the heritage;” they do not share the estate of her husband. The *Retnâcara*.

They share not the estate of their mother, nor of her husband, nor of their maternal ancestors. The *Pracâsa*.

The notion is, that the word “only,” in the phrase “they are sons of their natural fathers only,” excludes the mother, maternal grandfather, and other ancestors. They shall take the heritage of the natural father, and not merely offer the funeral cake to him (CCCXLII 2). If the mother were purchased by paying a fee or price to her husband for the sake of obtaining issue, *they may offer the funeral cake to the natural father*; but if no purchase took place, they shall offer it to the married possessor of their mother. Such is the interpretation delivered in the *Retnâcara*.

CCCXLIII.

NÁREDA:—He who procreates issue, on a woman purchased for a price *paid to her husband*, claims *the offspring*; but if not purchased for a price *so paid*, the issue of the woman belongs to her husband alone.

CCCXLIV.

MENU:—If two sons, begotten by two *successive husbands, who are both dead*, contend for their property, then in the hands of their mother, let each take,

take, exclusively of the other, his own father's estate.

Here the woman must either be a strumpet, a twice-married woman, or a disloyal wife. Thus the *Pārijāta*, with which the *Retnācara* concurs. It should be here remarked, that, according to the *Retnācara*, the son begotten on a woman purchased by the payment of a price, though not authorized to have issue by another *than her husband*, shall offer the funeral cake to his mother's husband alone: but that contradicts the text of MENU (CCLIV). It should not be argued, that this text relates only to intercourse with the wife of another, for the sake of obtaining issue for himself. That is incompatible with reasoning; for, if the seed, *or male power* alone, generate a son, how can the child belong to the husband of the mother? Some affirm, that this must be established on the sole authority of positive law. Others hold, that the son of a woman not purchased from her husband becomes his offspring, by the text of NĀREDA (CCCXLII). That the son of a woman purchased from her husband is the issue of his natural father, must be deduced from the subsequent text (CCCXLII 2). "Not authorized to have issue by another" can be no significant epithet of a woman sold by her husband for a price received. The subsequent remark, "but if she were not purchased, &c." relates to a woman fraudulently authorized to have issue by another. The text of MENU (CCXXIV) also relates to the case of a woman who was not bought: why it has been explained by the author of the *Retnācara*, as relating to a wife purchased *from her husband*, may be questioned. This concise exposition may suffice.

SECT. II.—On Property not subject to Partition.

CCCXLV.

MENU:—Wealth acquired by learning, belongs exclusively

clusively to any one of the brothers who acquired it; so does any thing given by a friend, received on account of marriage, or presented as a mark of respect to a guest.

Since the word “exclusively” precludes the rest of the brethren, it follows, that such wealth is not subject to partition.

What is received as a mark of respect, when a *madhuperca*, or gift of honey, curds, and butter, is presented, belongs exclusively to him *who receives the present*. The *Retnâcara*.

CCLXXVI.

VYĀSA :—Wealth acquired by learning, or gained by valour, or received from affectionate kindred, belongs, when partition is made, to him who acquired it, and shall not be claimed by the coheirs.

“Gained by valour;” acquired in war or the like.

The *Retnâcara*.

CCCXLVII.

CĀTYĀYANA :—What has been acquired by learning, after instructions received from a stranger, and a maintenance provided by one of a different family, is called wealth gained by learning :

2. What is gained by proving superior learning, after a prize has been offered by *some third person*, must be considered as the acquisition of a scholar, and ought not in general to be divided among coheirs :
3. So what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice, as a fee

fee for answering a question in casuistry, or for ascertaining a doubtful point of law; or what has been gained as a reward for displaying knowledge, or for victory in a learned contest, or for reading the *Vêda* with transcendent ability:

4. Such wealth have the Sages declared to be the acquisition of science, and not subject to distribution; and the law is the same in regard to *liberal or elegant* arts, and to increase of price from superior skill in them.
5. A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed, or a present from a pupil formerly instructed, Sages have declared to be the acquisition of science: what is otherwise acquired, is *the joint property of the coheirs* :
6. Even what is won by surpassing another in learning, after a stake has been deposited, VRIHASPATI pronounces the acquisition of knowledge, and impartible :
7. What is obtained by the boast of learning, what is received from a pupil, or for the performance of a sacrifice, BHRIGU calls the acquisition of science.

“After a maintenance provided by one of a different family,” and by him only; else the text would be unmeaning, because every person who studies long, is at times supported by one of a different family. “Maintenance” is merely illustrative, comprehending vesture and the like. This is accurate. “One of a different family” alludes to the father. Consequently, what is acquired by that learning which was attained without using the property of the father, and not generally any wealth gained by the
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the application of science, is technically called wealth gained by learning. In like manner, it must be also understood that the means of subsistence common to the brethren or other parceners have not been used. The lawgiver propounds a distinction respecting the mode of acquisition (CCCXLVII 2). This is pertinent, according to the opinion of CHANDESWARA and others.

What is received after displaying superior learning, for which a prize had been offered, is the acquisition of a scholar, and must not in general be divided among coheirs. Some person saying "no one can display pre-eminent skill in this lecture of the *Vēda*," a learned man replies, "if I prove superior learning, what wilt thou give me?" After a prize has been offered by the proposer of this trial, what is received by the learned man, on evincing superior learning, is the acquisition of a scholar. Such is the meaning, as apprehended by RAGHUNANDANA and JIMUTA-VĀHANA.

So what has been received in the form of a gratuity, from a pupil, on account of instructions; or as a recompence from a votary, for the performance of a sacrifice by his family priest; "or as a fee for answering a question in *casuistry*," (for instance, any question being solved, when some person gives a reward not previously proposed;) "or for ascertaining a dubious point of law," that is, for relieving the doubts of one who thus proposed a reward, "to him who removes the uncertainty in the meaning of this ordinance I will give this gold," (or it may signify a fee, such as a sixth part or the like, which is received for deciding a question of law between two contending parties who apply for an award); "or what has been gained as a reward for displaying knowledge," that is, what is received from a wealthy man on consideration of learning, being told by others, or himself knowing, that a gift to a learned man is laudable: *such wealth is the acquisition of science.*

YAMA:—The wise have pronounced him worthy of gifts, who is adorned with science, endowed with virtue, resigned and gentle, subdues his passions, preserves

preserves strict veracity, is grateful and disinterested, is kind to cows, and protected by them, is liberal, performs due sacrifices, and belongs to the sacerdotal class :

2. A present should not be offered to the acceptance of such as neglect austerities, are ignorant of holy texts, and accept a livelihood under men of any class, however low ; for a stone cannot transport a stone over a river.

What has been received as a reward for victory, in a contest relative to sacred literature, or any other learned controversy, is the acquisition of science. “ Or for reading the *Vēda* with transcendent ability ;” when something is proposed to be given away, and a doubt arises to whom it shall be given, many deserving persons being proposed, what is given to one on account of veneration, for his transcendent ability in reading the *Vēda*, is the acquisition of science. So what is gained by painters, goldsmiths, and the rest, through superior skill in *liberal or elegant arts* ; and even that which is gained by victory over another in gaming or the like ; all that is exempt from participation with others. The meaning is, that wealth gained by superior attainments in any *art or science*, belongs exclusively to him who acquired it. For the sake of elucidation, CĀTYĀYANA has delivered the precept diffusively. Such is the opinion of JĪMŪTĀVĀHANA, RAGHUNANDANA, and the rest. According to their opinion, “ increase of price ” must be explained what is gained by the increased value of a thing above the price at which it was purchased.

“ For reading the *Vēda* with transcendent ability ;” for excellent lecture of it. “ Increase of price ;” what is received through the skill of one man, above the suitable price, becomes his several property : such is the meaning. “ A prize which was offered for the display of superior learning ;” what is gained by the display of pre-eminent knowledge, after a prize has been offered for superior learning, in this mode, “ to him who evinces the greatest knowledge in this lecture, or in this contest, a hundred

dred *suvernas* shall be given." What is received as a present in token of respect, from a votary for whom a sacrifice was formerly performed, or from a pupil formerly instructed, *is the acquisition of science.* During a contest between two learned adversaries, if any man say, "I will give money to him who proves conqueror," what is gained by him who overcomes his adversary VRĪHASPATI pronounces the acquisition of knowledge. What is obtained by influencing the mind of the giver by such a boast as this, "I have studied this science;" what is received from a pupil, of whom a present is asked, (or what this pupil, studying texts of the *Tantras*, gives for the worship of the gods, or similar purposes; or what a student, coming to read the *Vēdas*, gives as a mark of respect to his preceptor, or as an auspicious offering to deities;) or what is given during sacrifice as a pious oblation to the gods, or as a mark of respect for the officiating priest; all that BHRĪGU calls the acquisition of science. Such is the interpretation of CHANDÉSWARA, MISRA, and others.

"What has been gained as a reward for displaying knowledge;" what is received by one who boasts in a learned assembly, "I am superior to all," even though he fail in reading the *Vēda* with transcendent ability, is the acquisition of science; but what is received in the mode above mentioned, by those who read the *Vēda* with superior skill, although they do not themselves boast of their talents, must be also considered as the acquisition of science.

What a liberal man, any-how knowing him to be learned, gives him as a present intended for the learned in general, delivering it near the bank of the Ganges, on a day of purity, in the form enjoined, is not a particular sort of wealth gained by learning, but is described by the phrase "what is otherwise acquired is the joint property of the co-heirs" (CCCXLVII 5).

Accordingly, "his own" is inserted in the expression, "what has been gained by a man as a reward for displaying his own knowledge*" (CCCXLVII 3). "For victory in a learned contest;" what has been gained, though no reward had been previously proposed, through the satisfaction afforded to a wealthy man by overcoming an adversary in a disputation. The term

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"excellent

* Copying a version of this text as made by Sir WILLIAM JONES, I have omitted the term in question: as the sense is complete without it, I judged it unnecessary to alter his translation. T.

“ excellent lecture ” signifies transcendent skill in reading the *Vēda*, *Purānas*, or the like. Thus, a reward being promised in these words, “ if any man recite this ‘*Sāc’hā*’ of the *Vēda* in one day, I will give him a hundred pieces of money ; ” then the recital of one ‘*Sāc’hā*’ in one day is reading the *Vēda* with transcendent ability.

Or this may be considered as a prize gained by proving superior learning. According to this opinion, the first hemistich of the sixth verse is read *vidyayā pañ’a pūrvacam*, by superior learning after a prize had been offered. But, according to JĪMŪTAVĀHANA and others, it is read *vidyayā dyūta pūrvacam*, by surpassing another in learning after a stake has been deposited. In liberal or elegant arts also, what is gained by the display of such peculiar qualities is the acquisition of skill in arts. The law is likewise the same in regard to the science of music and the like : the legislator declares it so in respect of the mercantile profession ; “ and the law is the same in regard to an increase of price ” (CCCXLVII 4). What is the law respecting the military profession ; is that unnoticed ? To this MISRA replies ; “ science ” signifies both arms and sacred literature : consequently it is noticed ; and the acquisition of science must be also understood in the case of arms. In fact, wealth gained by valour will be mentioned in regard to the military profession : what is technically named the acquisition of science, is not exclusive thereof ; but, according to CHANDÉSWARA and others, it must be affirmed to be common to the co-heirs.

Some explain “ a fee for answering a question in casuistry,” a reward received on account of the gratification afforded by the solution of a question ; for instance, a man possessing immense knowledge attends an universal monarch, and discusses a question proposed by him, though he do not gain the victory (*for even in controversy a conqueror of worlds is invincible*), yet, spreading lustre over the assembly, he receives a reward from the monarch. “ A fee for ascertaining a doubtful point of law ; ” they explain this phrase in the sense above mentioned. Or the reward which a man receives for exhibiting extracts of books that remove the doubt, is the acquisition of science, and becomes his *exclusive property*.

The wages of mere transcribers, and generally the fee received from

from the audience for reading the *Vēda*, *Purānas*, or the like, without transcendent skill in poetry, and in *explaining* the sense of poems: this, and other similar gains, according to CHANDÉS-
WARA and the rest, are not the acquisition of science. In fact, in all cases whatsoever wherein superior skill is required, the wealth gained is technically denominated the acquisition of science, otherwise it is simply wealth acquired by the man himself. Such is the full sense, according to CHANDÉSWARA and others.

CCCXLVIII.

MENU:—What a brother has acquired by labour or skill, without using the patrimony, he shall not give up without his assent, for it was gained by his own exertion.

JÍMÚTAVÁHANA and the rest explain the particle “and” in this text of MENU* as bearing a causal sense. Consequently the meaning is, because it was gained by his own exertion, therefore it should not be given up to his brethren without his assent. Hence, every kind of wealth gained through learning and the like, being acquired by the man himself, is, without distinction, exempt from partition if the patrimony have not been used; but if that be employed, the rest of the brethren are specially entitled to receive the shares which will be mentioned: and that is *true*, without exception, in *every* case of wealth acquired by learning. It should not be argued, that, were it so, the particular explanation of the term, as propounded by CÁTYÁ-YANA, would be superfluous, because it would be proper to affirm simply that what is gained through learning is the acquisition of science. The texts of CÁTYAYANA are only intended for ample illustration. What then is the meaning of the phrase, “that which is otherwise acquired is the joint property of co-heirs?” Land or the like gained otherwise than in the mode mentioned, *for example*, by gratifying the donor with a present out of the paternal estate, is the joint property of all the brethren:

Z 2

the

* In the reading here cited that particle does not occur. In another place the text is cited with this and other variations, which, however, do not affect the sense. T.

the text must be so supplied. It should not be argued, that the acquisitions of science being stated at large by CÁTYÁYANA, no participation is admitted in wealth gained by learning, although the patrimony have been used ; and the text of MENU (CCCXLVIII) is applicable to other cases. VYÁSA (CX) ordains the participation of brothers in wealth gained by valour, which is subject to the same law with the acquisition of science ; and for this reason the same ought also to be admitted in the case of wealth acquired through learning. The analogy of acquisitions made by science and by courage must be inferred from the circumstance of VYÁSA having propounded the same rule as applicable to both (CCCXLVI). This text also must be referred to the case where the patrimony is not used. That may be actually used at the time of so acquiring the wealth ; and even in the case of property acquired through science *after instructions and maintenance* received from the father, the patrimony has been used. This is virtually declared by CÁTYÁYANA (CCCXLII). On the authority of another text of the same legislator, the participation of the other brothers must be acknowledged in wealth gained by learning, which was *acquired through instructions* received from paternal uncles or the like ; for the words “ by their father ” would be nugatory, if family were referred solely to the paternal grandfather and the rest. JÍMÚTAVÁHANA and others so expound the law.

CCCXLIX.

CÁTYÁYANA :—Yet VRĪHASPATI has ordained, that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their father, or by their paternal grandfather *or uncles* ; and it is the same if the wealth was acquired by valour, *with assistance from the family-estate*.

If any person appointed by some wealthy man possessing a taste for literature, to distribute among priests a sum of money presented as a donation to many *Bráhmaṇas*, covetously reserve a large sum for himself, distribute the small remainder among priests, and again take back a part as a mark of respect *due to himself,*

himself, should the donor, afterwards informed of the circumstance, acquiesce in that misappropriation, reflecting “ he also is a *Brāhmaṇa*, my purpose is therefore fulfilled ;” or if any person skilled in the science of accounts, and somewhere employed in the service of the king, have taken possession of some land, and no other public officer dare to oppose him, and the king when informed of it does not disapprove *his conduct* through excessive partiality, what is the settled rule of division in either of these cases * ?

If science had been studied in both families, or have been acquired by instructions received from the father, with a maintenance provided out of his estate, brothers may claim shares *of what is gained*, because the patrimony has been used. If this be alleged, the answer is, when some wealthy man has attained his purpose through money expended by the father, and afterwards contracts a friendship with the son as with a stranger, the rest of the brethren might also claim a share of any thing given *by him* to that son for the sake of enhancing friendship. The rest of the brethren can only claim shares of that wealth, for the acquisition of which money was expended *out of the family estate*, or which was acquired by learning attained through the instructions of the father with a maintenance provided out of the patrimony. Accordingly it is remarked by JĪMŪTAVĀHANA, that wealth acquired with the use *of the common stock employed* for that very purpose, is justly considered as joint-property ; but in the present case, the money has been expended for another purpose, and science is not among the means by which this gift is obtained : brothers cannot therefore claim a share. If this be alleged, the answer is, if the rest of the brethren cannot participate when the use of the patrimony is mediately *connected with the acquisition*, what argument proves joint-property, when science, attained by instructions received from the father, is mediately connected with the acquisition ? Some lawyers reply, brothers cannot claim a share *of property so acquired*.

Is not the law thus explained : in the case of such wealth as is technically named by CĀTYĀYANA the acquisition of science, if the patrimony have not been used, no share shall be given to

* The author has left his question unanswered. T.

any other brother ; but if it have been used, a coheir less learned than the acquirer, or wholly ignorant, shall be excluded from participation, but one equally or more learned shall receive a share ?

CCCL.

CĀTYĀYANA :—Wealth acquired by a learned heir shall never be divided among his ignorant coheirs ; but he shall share it with such of the parceners as are equal or superior to himself in learning.

“ Ignorant ;” destitute of, or possessing less learning ; for grammarians hold that the negative particles bear six senses ; similitude, privation, diversity, paucity, want of excellence, and contrariety *. “ Learned ;” adorned by science. Wealth acquired by him *shall never be divided among ignorant coheirs*, whether joint property have or have not been used. “ Equal or superior to himself ;” the word learning, employed ambiguously, is referred to both terms : the meaning therefore is, such of the parceners as are equal, and such as are superior in learning. Thus JĪMÚTAVĀHANA and RAGHUNANDANA. But others explain the phrase by *regular* apposition : superiority in learning is signified by the single term “ superior ;” as in the phrase DÉVADATTA is the most handsome, and YAJNYADATTA is next, the last term signifies handsome in the next degree.

The law should not be so explained as advanced in the question proposed ; for, NÁREDA declaring that wealth acquired without supplies from the joint stock shall not be shared with ignorant coheirs, it thence appears, that, if supplies were furnished from the joint stock, the acquisition of science must be shared even with unlearned coheirs.

CCCLI.

NÁREDA :—A learned heir shall not give a share out of his own *acquired* wealth to an unlearned coheir
without

* A citation from the Metrical Rules of BHARTRĪHERI.

without his assent, unless it were gained by him receiving supplies out of the patrimony.

CCCLII.

YÁJNYAWALKYA :—Any other property which a man has himself acquired without using the patrimony, and any thing given by a friend, or received on account of marriage, shall not be shared with coheirs.

2. He who by his own pains, *and at his own charge*, recovers *or repairs* what has descended from his ancestors, and has been long taken away, *or nearly destroyed*, shall not bring it into partition with coheirs, *unless it be land*, nor what he has *thus* gained by his learning.

“Any other property ;” other than a thing given by a friend or the like. The acquisition of science being also suggested by the first text, the expression “nor what he has gained by his learning” is superfluous. If this be alleged, the answer is, No ; for it is intended to exclude unlearned coheirs (even though joint property have been used,) from partition in that which is different from the several property described in the first verse of CATYÁYANA (CCCXLVII I), and which is acquired through learning attained whilst a maintenance was provided by the father. There is no difficulty in affirming this to be the opinion of SÚLAPÁNI. In like manner, if any thing have been received from a friend, it is only exempt from participation when the joint stock has not been employed *to obtain the gift*. “Any thing received from a friend” is a mere instance of a general meaning.

CCCLIII.

NÁREDA :—Three sorts of wealth are in general not subject to partition ; what is gained by valour,

what is given by the kinsmen of a wife, and what is acquired by learning; and also any thing that has been received by the favour of a father, *or other friend*.

2. And this law is also observed in the case of him to whom any thing has been given by his mother, through affection, out of her own several property; for, as a father, so has a mother power *over her own* *.

Reserving what was given by the kinsmen of a wife, (or wealth received at the time of accepting a wife,) and what was gained by valour, or acquired by learning, let him distribute any other property: the text should be so supplied. The reason is mentioned, because these three sorts of wealth are not subject to distribution. What has been received by the favour of a father, is also exempt from partition.

CCCLIV.

VYÁSA :—What is given by a paternal grandfather, or by a father, as a token of affection, belongs to him who receives it; neither that, nor what is given by a mother, shall be claimed by coheirs.

2. What a man gains by his own strength, without reliance on the patrimony, he shall not give up to the coheirs, nor what he acquires by learning.

Joint property may have been used even for the acquisition of wealth received in donation. For example, a man obtains a gift by gratifying the donor with presents on his own part. Accordingly it is thus recorded, “In the *Cali* age, a follower, or one admitted to fellowship, obtains presents.”

According to JÍMÚTAVÁHANA, and the rest, there is no distinction. The author of the *Pracáśa*, JÍTÉNDRIYA, and others,

* The second verse was cited a few pages lower; I insert it here to avoid the necessity of repeating the first verse. T.

others, hold the very same opinion. But MISRA, CHANDĒS-
WARA and the rest affirm, that some distinction appears to be
intended by VYĀSA, who declares that no share of wealth acquired
without using the patrimony shall belong to him who did not
contribute to the acquisition; and afterwards adds, “nor what
is gained by learning” (CCCLIV 2): and the distinction seems
to be this; another brother shall have no share of wealth acquired
by *learning*, even though supplies have been furnished out of the
common stock.

It should not be argued, that, in other cases, when joint pro-
perty has not been used, no other shall participate *in the wealth
gained*; nor in *that which is called* the acquisition of science, as
described by CĀTYĀYANA (CCCXLVII): but, wealth gained
by science being again mentioned, the rest of the brethren may
claim shares of that which is acquired by learning in modes other
than those described by CĀTYĀYANA, even though supplies have
not been received out of the joint property. No such meaning
is suggested by the texts of VYĀSA and YĀJNYAWALCYA: for you
must thus interpret the text of VYĀSA (CCCLIV 2); what is
gained without reliance on the joint stock, the acquirer shall not
give up to the coheirs; he shall not give up to them that wealth,
technically named by CĀTYĀYANA the acquisition of science,
which is gained without using the joint stock. The same mean-
ing also results from the text of YĀJNYAWALCYA, connecting
the last phrase with the preceding terms “acquired without using
the patrimony” (CCCLII 1): thus also it does not appear that
he shall not give up *to the heirs* wealth which is acquired by learn-
ing, but which is not technically called the acquisition of science.
Nor should it be argued, that, in like manner as it appears from
the precept “five creatures with five claws may be eaten,” that
man and other five-toed animals, excepting *only* the hare, porcu-
pine, tortoise, rhinoceros, and crocodile* of the Ganges, are for-
bidden

* With deference I wish to correct the translation of a verse of MENU relating
to this subject (Ch. v. V. 18). In his interlineary version, Sir WILLIAM JONES
had translated *c'ha'dga*, rhinoceros, which is the undoubted meaning of the word.
I can assign no reason for his substituting the *Sanscrit* word *gandaca*, which is
another name for the rhinoceros. In the same version, Sir WILLIAM JONES
translated *go'd'hā*, iguana; I am led to understand by that term the *go'dhicā* or la-
certa

bidden food ; so wealth acquired by learning in other modes than what is technically denominated the acquisition of science, appears not to be exempt from participation. “ Five ” being specified that may be suggested in respect of five-toed animals ; but in the present instance, since the term is not restricted by the epithet “ technically so called,” no such meaning is suggested : for the sense of the precept is “ five creatures with five claws, and no other five-toed animals, may be eaten ;” but in the present instance, is not the answer *furnished by the text*, “ he shall not give up what is acquired by learning ? Nor should it be argued, that what is stated by VYĀSA in the first hemistich (CCCLIV), is elucidated by the concluding terms of the same text “ nor what he acquires by learning,” and that the text of YĀJNYAWALCYA must be expounded in a similar mode. The words “ wealth acquired by science,” which occur in another text of VYĀSA (CCCXLVI), would be unmeaning. But at present the text cited (CCCXLVI) is considered as relating to the acquisition of science technically so denominated by CĀTYĀYANA (CCCXLVII 1 and 2, &c.) ; the words “ nor what he acquires by learning ” (CCCLIV) merely illustrate the preceding part of the same text : there is not consequently any vain repetition.

After declaring the acquisition of science and of valour exempt from partition (CCCXLVI), a distinction is expounded in another text (CCCLIV) ; the expression “ what he gains by his own strength ” being there employed, it relates to the acquisition of valour ; by a text formerly cited (CX), partition is ordained by VYĀSA when no special ground of exemption exists : hence there is nothing superfluous ; for, an exception opposed to a general maxim, and a general precept opposed to a special rule, cannot be deemed superfluous. It should not be argued, that, were it so, the technical sense of the term “ acquisition of science ” would be vainly propounded by CĀTYĀYANA (CCCXLVII 2, &c.). The author of the *Pracāsa* says, the texts of CĀTYĀYANA elucidate those acquisitions of science in which the patrimony is not used :

certa gangetica, named *go'hi* and *gariāl* in the vulgar dialects of Bengal ; the iguana is in *Sanserit* called *gaud'héra*, *gaud'hara*, *gaud'héya*, and *gód'hicátmaja*, which literally signifies offspring of the lacerta gangetica. May I add, that this species of alligator has been ill described by European naturalists ; and, through a strange mistake, has been called the open-bellied crocodile. T.

used : or, *it might be replied*, CÁTYÁYANA has delivered a full explanation of the term “ acquisition of science.”

If this be alleged, the answer is, a distinction being taken by texts of law (CCCLX) in regard to the acquisition of valour, it appears that a distinction does exist in regard to such acquisition. These texts (CCCLX) do not relate to wealth so gained by valour, when paternal property has not been used ; for, in this instance also, the riding horse, weapons or the like, may have belonged to the father. Nor can it be inferred, that, this *acquisition* being specially mentioned, any other wealth gained by valour must be acquired with aid from the patrimony. It is possible that an indigent son may display his courage, having received a horse, arms, and the like, from some person pleased with his eloquence, humility, and so forth. Nor is it merely an ample explanation of the term. It would be improper to omit the obvious *gain of military* pay, and only state wealth acquired through favour in consequence of an arduous achievement. The distinction does not consist in this, that soldiers, trained to arms in their own families, shall give a share of such gains to other brothers. Were it so, it would be inconsistent with reason ; for, wealth gained by valour generally (that is, military pay), if acquired without supplies out of the patrimony by soldiers trained to arms in their own families, is not subject to partition : that the reward of a gallant achievement should in similar circumstances be partible among coheirs, would be inconsistent with reason. Nor is it ordained that a share shall be given to a learned coheir *in all cases* without exception ; for that would be inconsistent with reason. Consequently, since it is settled that what is technically called the acquisition of courage, shall not be partible even though joint property have been used ; but the soldier's pay, and any other wealth gained by valour, is partible, if the joint property have been used, but not otherwise ; the same rule of decision should be also inferred in regard to the acquisition of science and the like.

Thus partition of wealth gained by valour, which is ordained by a text formerly cited (CX), relates to the hire *of the soldier*, not to the reward of a gallant achievement ; another law of VYÁSA (CCCXLVI) relates to that which is technically called the acquisition of learning, or of valour ; the text of VYÁSA last cited

cited (CCCLIV), mentioning "by his own strength," as well as the law of MENU (CCCXLVIII), which expresses "by his own valour," alludes to that which is acquired by agriculture or the like; the concluding part of the text, "nor what he acquires by learning" (CCCLIV) relates to wealth gained by a common recital of sacred poems and the like; and, through the connective particle, it alludes to the wages of valour: the phrase in the text of MENU (CCCXLVIII), "and what was gained by his own exertion*," comprehends every other acquisition.

Is not this inconsistent with the text of NÁREDA (CCCLI)? for it is there suggested, that a learned man must give to an unlearned coheir a share of wealth acquired through science, which was attained while supplies were received by him out of the patrimony? To this CHANDÉSWARA replies, the intention is this: when a parcener, who attained science, receiving food, apparel, and other supplies out of the joint property only, earns wealth by his learning without reliance on the common stock for supplies, then no share shall be given to the unlearned coheir: if he do rely on the joint stock for his maintenance, what is so acquired through science must be shared even with unlearned coheirs: but if the joint stock were not used *by him* at the time of his acquiring knowledge, then no part of his gains shall be given up to any ignorant coheir, even though he receive supplies from the joint stock during the time of acquisition, but he shall give a share of that wealth to the learned coheir alone; since VYASA, having ordained the severalty of wealth gained without the use of the patrimony, separately declares the acquisition of science exempt from *general* partition. Accordingly the indivisibility of wealth acquired by learning, which will be again mentioned, must be referred to the case when supplies were received from the joint stock at the time of acquiring wealth through that science, which had been attained with a maintenance provided out of several property. *Thus far* CHANDÉSWARA.

This may be here briefly stated as *resolving itself into* four cases. 1st, The acquisition of wealth by one instructed in science after a maintenance provided out of the paternal estate, but without using the common stock *during the exertion for gain*. 2d, The same case, but expending joint property during the acquisition. 3d,

* In compliance with the former gloss, it has been translated in a causal sense. T,

3d, The gain of wealth by one who attained science without supplies from the common estate, but who uses the joint stock *during the exertion*. 4th, The same case, but without expending joint property *during the acquisition*.

1. In the first case, it is pronounced his own acquired property, not to be surrendered to ignorant coheirs, under the texts of GÓTAMA (CCCLV), and CÁTYÁYANA (CCCL); whence CHANDÉSWARA concludes by saying, it shall not be given up to an unlearned coheir.

CCCLV.

GÓTAMA:—A learned man shall not give a share of *his own acquired property* to an ignorant coheir against his own will.

Does it not follow, that the text of NÁREDA (CCCLI) relates not to such wealth as is technically named the acquisition of science? for the condition, “unless it were gained by him receiving supplies out of the patrimony,” would not be pertinent: and it is subsequently remarked by CHANDÉSWARA, in his gloss on the text of VYÁSA (CX), that it must be considered as relating to wealth acquired by learning, valour, and the like, *but distinct* from what is technically denominated the earnings of science or of courage. The text (CCCLI) must therefore relate to the acquisition of wealth through knowledge attained with a maintenance provided out of the joint stock: the precept of CÁTYÁYANA (CCCL) must of course relate to the same subject, not to the acquisition of science technically so called; since it bears the same import with the law propounded by NÁREDA. Or the rule of decision in both cases is established by the texts of two Sages. It should not be argued, that the precept delivered by NÁREDA may also relate to the acquisition of science technically so called, because that is the obvious interpretation. The technical denomination would be superfluous; and the expression “nor what he has thus gained by his learning” (CCCLII 2) would be unmeaning. At present that denomination serves to exclude ignorant coheirs from participation in wealth named the acquisition of science, even though supplies have been received
out

out of the joint property. Nor should it be argued, on the authority of the text of CĀTYĀYANA, that the acquirer must give a learned coheir *a share of* such wealth which he has gained without using the general stock. It would be inconsistent with common sense that it should be joint property, when no use has been made of the joint funds. By excluding the ignorant coheirs from participation when wealth gained by learning is distributed, and by the particle “but,” *which occurs in the text*, it suggests the law, that learned coheirs shall participate; and the distribution, previously hinted, is contemplated *in the precept*. Hence distribution is not ordained by the text in the other supposed case.

But other lawyers consider as accurate the reading approved by CHANDÉSWARA and JĪMÚTAVĀHANA in the text of NĀREDA; *vaidyō vaidyāya*, a learned heir *shall not give a share* to a learned coheir, instead of *vaidyō vidyāya*, *he shall not give it* to an unlearned coheir; *according to them*, the sign of the privative *A* occurs in some books through the carelessness of the transcriber: consequently the meaning is, a learned heir shall not bring into partition, with a learned coheir, wealth technically named the acquisition of science, and which he has gained without using the patrimony. CĀTYĀYANA propounds a distinction in respect of learned coheirs (CCCL). On the texts of these two Sages, wealth gained through science attained with supplies out of the patrimony, shall be shared with such of the parceners as are equal or superior in learning. Such is the result.

The remark of CHANDÉSWARA may be accurately applied *to these texts*. Thus, to explain their sense, he first notices the rule respecting gains not technically named the acquisition of science; “when a parcener, who acquired learning, receiving food, apparel, and other supplies out of the joint property only, earns wealth by his knowledge, &c :” and this is intended to render the explanation perspicuous, by stating the whole of the various rules concerning wealth acquired by learning: the expression, “receiving food, apparel, and other supplies out of the joint property only,” is merely an instance which intends every sort of wealth gained by learning, but not technically named the acquisition of science: “unlearned coheir,” at the close of that sentence, is also a mere instance, intending generally any person who did not contribute to the acquisition. The commentator proceeds

proceeds to explain the object of both texts; "but if the joint stock were not used by him at the time of his acquiring knowledge, then no part of his gains shall be given up to any coheir, &c.:" to remove the doubt whether a learned man be also excluded, the commentator adds, "but it belongs to the learned alone:" that is, taking the sixth case in the dative sense, "the acquirer shall give a share of that wealth to the learned coheir alone;" the sentence must be so supplied. Consequently the acquisition of science, as defined by CÁTYÁYANA (CCCXLVII 2, &c.), shall not be shared with any coheir whomsoever, even though food and apparel were received out of the joint property during the attainment of knowledge, provided the common stock were not used during the acquisition; in like manner as wealth gained by agriculture and the like, is *in similar circumstances* exempt from partition. If the joint stock be only used during the acquisition of the wealth, it shall be shared with the learned coheir alone, under the texts of NÁREDA and others (CCCLI): if the joint property be so used in both periods, the gain shall be shared with all the coheirs; for it falls under the text which allots a double share to the parcener who made the acquisition (CX), since it is not such property as is technically named the earnings of science. But wealth otherwise acquired through learning, must be shared with all the parceners, if the joint stock have been used during the acquisition; but with none of them if it were not so used, for no text ordains *their participation*. *The law may be thus briefly expounded*. It is not customary, nor reasonable, nor directed by the letter of the law, that a share should be given to the learned coheirs *only*, when the wealth was acquired in the modes described by CÁTYÁYANA (CCCXLVII 2, &c.), but the joint property had been used during the attainment of science; for it appears from the text (CCCXLVII 1), that any other wealth (*not acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family*) is not the acquisition of science; it does not thence appear that shares shall *only* be given to learned coheirs. As for what is argued, that, since nothing is expressly mentioned in the text which ordains the participation of the learned, it must relate to the *use made of* joint property; that should not be considered as equitable, for it can have been nowhere mentioned, that *the rule* depends on the supplies received

ceived out of the joint stock during the attainment of the means of *acquiring wealth*. Thus do these lawyers expound the law.

2. In the second case, all the brethren shall have their due shares, distributed in the mode which will be mentioned ; for the text of VYA'SA (CX) implies the use of joint property during the acquisition ; and a similar *meaning is deduced* from a precept delivered by NA'REDA (CCCLI). This is actually declared by CHANDÉSWARA ; “ if he do rely on the joint stock for supplies, what is so acquired must be shared even with unlearned coheirs.”

3. In the third case, the gain shall be shared with a learned coheir ; as implied in the text of GÓTAMA (CCCLV), and declared by CÁTYÁYANA (CCCL). This is expressly said by CHANDÉSWARA ; “ he shall give a share of that property to a learned coheir : ” and it is reasonable ; for, if a learned brother may claim a share because the joint property was employed during the attainment of the science, why may he not do so if it be used during the acquisition of the wealth ?

4. In the fourth case, another brother, even though superior in learning, is excluded from participation ; for, the text of CÁTYÁYANA (CCCL) being referible to a case where joint property is used, there is no argument by which the general sense of the text of MENU (CCCXLVIII) can be restricted. Again ; in the law propounded by YAJNYAWALCYA (CCCLII), the words “ without using the patrimony ” are not connected with the subsequent part of the text, “ any thing given by a friend, &c. ; ” but, in the following verse (CCCLII 2), “ without using the patrimony ” must be supplied, from its coincidence with *laws delivered by other Sages*. Or the words may be connected, *say some lawyers* ; and knowledge attained by instruction in another family must be considered as the fourth case ; it is similar to *that of science attained with a maintenance* provided by one of a different family. HELÁYUDHA delivers this opinion. MISRA holds, that what is acquired, even with reliance on the joint property, by one who was instructed in arms or in science by a stranger, and who subsisted on a maintenance provided by an indifferent person, and whose family was not supported by the coheirs during the attainment of science, is the acquisition of knowledge, and exempt from partition ; but the text of NA'REDA (CCCLI) re-
lates

lates to the case where the joint property was used for the attainment of science, as well as for the acquisition of wealth. The *Párijāta* and others in every instance connect the words, "without using the patrimony," with the attainment of knowledge. They support the opinion of JÍMÚTAVÁHANA and the rest; the text of CÁTYÁYANA (CCCL), who is the propounder of the technical term "acquisition of science," is pertinent, as it relates to that subject; but the preceding text (CCCXLVII 2) is not *intended as* an explanation of the technical term: the law propounded by NÁREDA relates to what is named the acquisition of science, and also to what is not so denominated; it has the same import with the precept delivered by CÁTYÁYANA: this mode of interpretation is simple. But, in the exposition of CHANDÉSWARA and the rest, there is nothing incongruous; and the technical denomination, as explained (*according to their opinion*) in the texts cited (CCCXLVII 2, &c.), may have its use. Such is the difference.

'The mode of interpretation is simple:' thus, what is gained without using the patrimony is exempt from partition; what is acquired with the use of it shall be divided; what is technically named the acquisition of science, being gained without employing the common stock, shall be shared with no one: such are the three rules according to JÍMÚTAVÁHANA and the rest. Any other wealth, except that which is named the acquisition of knowledge, being gained with supplies provided out of the joint-property, shall be shared with all the coheirs; what is so named shall be shared with a learned coheir, if the patrimony have been employed either in acquiring the science or the wealth; such property, gained without using the patrimony, shall be shared with no one: such are the three rules according to CHANDÉSWARA and the rest. Here the insertion of a condition in the first rule, 'except that which is technically named the acquisition of science,' and the condition annexed to the third, 'property so named,' are burdensome.

'There is nothing incongruous in the exposition of CHANDÉSWARA:' thus all the learned coheirs have shares of wealth, gained even without using the joint-property, by the arduous achievement of one who attained knowledge, receiving food and apparel, and other supplies, out of the joint-stock: *but* no one

has a share of wealth acquired in agriculture or the like, (with a plough and other implements received from a stranger,) by the labour of one whose body had been nurtured with much food provided out of the common stock : a disparagement to science would follow as a consequence ; *which is an absurdity arising on the exposition of JÍMÚTAVÁHANA and the rest, but avoided by CHANDÉSWARA.* If it be argued, that no other brother shall have a share of wealth acquired without using the joint-property, even by one who attained science after a maintenance provided out of the common stock, then the separate mention of “ what is acquired by learning,” in the texts of VYÁSA and others (CCCLIV), would be unmeaning.

If any man give a suitable reward to one who was unwilling to teach gratuitously, what is the rule in that case ? (The payment of such a recompense is legal, as appears from the following text) :

Smṛiti—Whoever gives a subsistence to a teacher, and causes him to instruct twice-born men, what has he not given, *which was requisite to the attainment of his purpose, desirous as he was of fulfilling his duty, of obtaining the gratification of his wishes, and of acquiring riches*?*

To the question proposed the answer is : according to JÍMÚTAVÁHANA, it is the acquisition of knowledge, for it is received on account of science. Hence the rule of decision must be drawn from a consideration of *the fund, whence* food, apparel, and other supplies *were provided* during the period of receiving instructions *in the science, which is afterwards taught.* But, according to CHANDÉSWARA and the rest, it is not such wealth as is technically named the earnings of science. Hence, if the joint-property were used during the acquisition of the wealth, all the coheirs shall have shares ; if it were not used, but food and apparel were supplied out of the joint-stock *during the period of study*, a share must be given to a learned, not to an unlearned coheir ; if a maintenance were not received out of the common stock *during study*,

* Which are the three rewards of gift and of other meritorious acts. T.

study, nor any use made of the joint-property *during the acquisition*, no share shall be given to any person. This brief explanation may suffice.

If food and vesture have been received for some time out of the common stock, and afterwards obtained in alms or the like, or if the science were studied for some time in the student's own family, and afterwards in a different one, what is the rule of decision in these cases? Wealth acquired by that science, during the attainment of which food and vesture were supplied out of the common stock, or which was learned in the family, is not technically named the acquisition of knowledge. If the same science be of both descriptions (*partly learned in one period, and partly in the other*), what is the rule of decision in regard to wealth earned by that knowledge? *It must be settled* by a nice distinction; the teacher, and the maintenance during study of that branch of a single science, such as astronomy or the like, by which the wealth was gained, must be inquired. So likewise in philosophy and other sciences, the study of that controversy, respecting which a question was proposed, must be ascertained. But if grammar, which is universally requisite, have been learned in the student's own family, what is the rule? To this it is answered, although grammar, which is necessary to the science that becomes the means of acquiring wealth, have been learned in his own family, still, if that particular science through which it is gained be not there learned, it is unexceptionably called "the acquisition of knowledge." If a minute distinction cannot be made, the matter must be adjusted in the proportion which may be settled by an intelligent *arbitrator*. For instance, if the science, which becomes the means of earning money, be half learned in the man's own family, then half the wealth acquired should be distributed among the coheirs, in such shares as are ordained by the law.

The distribution ordained by law assigns two shares to him who made the acquisition, and one to each of those who did not contribute to it; for the text of VYÁSA *directs such a distribution* (CX). "Carriage and weapons," in the precepts cited, are mere instances of property in general. "Supplies from the common estate" alludes directly to the horse, or carriage, or the like; and indirectly, by the authority of the text, to science as the

means of acquisition. The share of wealth gained by knowledge, which is ordained by CĀTYĀYANA and others to be given to a learned coheir, does not intend an equal share, for the import is the same with this precept (CX).

CCCLVI.

VASISHT'HA :—He among them who singly acquires wealth, shall take a double share of it.

This text also relates to wealth gained after supplies received out of the common estate ; for it is declared, that the acquirer shall take the whole if he use not the joint-property (CCCXLVIII). Since the “patrimony” is mentioned in the texts of MENU and others, this *double share* must be understood, when the acquisition is effected by the use of any property which belonged to the father, not by the simple use of property *in general*. In like manner, if one brother acquire wealth in concert with his father, he ought to receive a double share. Accordingly MENU ordains equal partition of wealth gained by the co-operation of all the brethren (XXIX). But, in this case, the father is a thing common to all his children ; for he is the sire of them all. Consequently, if the father of five sons caused fifty *suvernas* to be earned by one of his children, in that case, after his death, the sum shall be divided into six shares, and the acquirer shall take a double allotment, consisting of a trifle more than sixteen *suvernas* and a half ; the rest shall take one share each, amounting to little more than eight *suvernas*.

In the case of an acquisition made by the son with the co-operation of his father, since both contributed thereto, ought not the sum to be divided into two parts, out of which one (*namely the acquirer,*) should take one part ; and the residue being divided into five parts *after the death of the father*, all the brothers should receive one share each ? It should not be objected, that, were it so, the distribution ought to be similar even in the case of an acquisition made by the use of joint-property ; one share should be allotted in consideration of the property used, and be subdivided into five parts, and one undivided share should belong to the acquirer. Since the common estate has not, like a father, power

to acquire wealth, it is regular to make the distribution as ordained by the precepts of legislators. Nor should it be objected, that, since RAGHUNANDANA directs the allotment of two shares, if one acquire wealth by using the horse of another or the like, equal partition is proper, although the horse or other common property cannot of its own accord effect the acquisition.—Whatever may have been the notion of RAGHUNANDANA, the acquirer is also entitled to a double share, by the precept of the legislator, if he use a horse belonging in common to the partners, or any other joint property. It should not be objected, that, in the case of an acquisition made in concert with the father, he is a thing common to all his children. On the contrary, in the case of a gain made by the *common exertion of* father and son, since the latter is alone subordinate, he ought to be considered as the instrument of the acquisition made by the father. Does not this appear an unjust disparity? *for*, if the father be acknowledged subordinate in the instance of a gain made by both, (*through the active exertion of the son under his father's directions,*) the son, who makes the acquisition, shall receive sixteen *suvernas* in the case above mentioned*: but if their equality be admitted, the acquirer has thirty *suvernas* after the death of his father, and the rest five each. If this be proposed, the answer is, what difficulty can follow from the admission?

To this some reply, the decision should be regulated according to the superior influence of the acquirer, or of the means of acquisition. Thus, if cavalry alone be required, and hire be only obtained from the king, or other employer, on producing a horse, the beast is chiefly considered; if making war be also required, both are equal; but if the soldier undertake warlike service even without a horse, and the beast be merely used as a conveyance, it is less considered. So, if the son alone practise the means of acquisition, and employ his father *in a subordinate office*, then the son shall have two shares, because he chiefly contributes to the gain; if the father chiefly promote it, or both equally, then since both are acquirers of the wealth, the son shall have half; even though the father principally contribute to the gain, the son may claim a share as the instrument of the acquisition, which ought to be rewarded with half the gain, and for which the legislator

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* See the preceding paragraph. T.

gillator directs the allotment of a double share to the brother who acquires wealth by the use of the common stock. This is fully declared. In fact, participation is only proper when the joint-stock has been used. A seeming disparity is thus obviated, namely the allotment of a double share only to one who practised agriculture, taking a rope for his plough out of the common stock, but employing his own several cattle and implements, or to one who begged alms after travelling to a foreign country with a pair of shoes taken from the common stock, at the same time that a double share is likewise allotted to one who practises agriculture with the whole of his implements supplied out of the common stock, or who goes to a foreign country and acquires wealth by *the use of* carriages, slaves, or various other means furnished out of the joint-property : for this seeming difficulty is reconciled by a proportionate allotment. Accordingly JÍMÚTA-VÁHANA observes, this alone is hereby proved, that one who has used joint-property, must make a distribution in proportion to that part, whether little or much, which has been used by him. Thus do these lawyers expound the law.

In like manner, if any thing be given by a pupil jointly instructed, or by a votary, or any other person so connected with all the parceners, in consideration of that very relation, the rule of decision is the same ; yet if it were given by persons whose acquaintance originated in that relation, but in consideration of the good qualities of the donee, it should not be distributed among all the coheirs, although the acquaintance arose from such a connexion, because this was not the motive of the gift.

Is not the *universal* allotment of two shares inconsistent with reason ? for if one of five brothers gain thirty *suvernas* with supplies out of the common estate, he gives twenty to his brothers, and reserves ten for himself ; in effect he receives five *suvernas* as the reward of the acquisition : another man of no more than equal merit, who has two brothers, gains thirty *suvernas* with the same labour and with equal use of joint-property ; he gives fifteen to his two brothers, and reserves an equal sum for himself ; in a word, he takes seven *suvernas* and a half as a reward of the acquisition. Thus one who has two brothers may receive more than one who has four, even though he be inferior in ability ; which is an unjust disparity : the greater number of brothers is

no fault on the part of the acquirer, wherefore he should sustain a loss. It should not be answered, that the text of VYÁSA must be referred to the case of him who has two brothers, and a proportionate distribution must be made after the same mode in the instance of one who has three or more. The plural number, not the dual, is employed in the text; "the other parceners must have equal shares" (CX 2). Nor should it be argued, that an indeterminate sense of the plural number must be necessarily inferred from the object in contemplation. By such indeterminate use, it is suggested, that the literal sense is not indispensable, not that the text is inapplicable to the case of many brothers; for that no-where occurs except in the instance of the word *dāra* (wife) and other terms, *masculine or plural in form, but feminine or singular in sense*. Nor should it be argued, that the distribution must be made, in favour of the acquirer, in that form which is observed when the whole is divided into two shares; and consequently the virtual sense is, that half shall be given to the acquirer, and thus nothing incongruous occurs in any instance. No *respected* author has said so.

If this argument be proposed, some reply, when the distribution is regulated by the greater or less degree of labour, it must be acknowledged, that the acquirer does in some instances receive half the gain: if the text be accurate when referred to this case, the silence of authors is nothing to the purpose.

But, in fact, this does relate to partition of heritage. If one among associates in commercial adventure, who are related to each other, as sons or sisters, take a horse appertaining to the partners, and acquire wealth *in a separate occupation*, no legislator has ordained that the acquirer shall have a double share *only*: the hire of the horse, or the like, not a share of the gain, shall be received *by the partners as owners thereof*; for it is incongruous that a share should be allotted to an irrational animal. A *specific* portion may nevertheless be received by way of hire under a special agreement. Again; brothers who did not contribute to the gain receive shares, because the acquisition was made by their own father and brother, with whom they are coparceners, and by *the use of* a horse appertaining to them in common: accordingly, when brothers are numerous*, the multitude of them is just such

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a fault,

* This ironical argument alludes to an objection stated above. T.

a fault, as it is in a father to have many sons when he himself makes a partition of *hereditary wealth*. Hence also JÍMÚTAVÁHANA has obviated the doubts which might have been entertained, whether parceners, who did not contribute to the acquisition, shall have shares of the wealth, though gained without the use of the joint property, excepting only the earnings of valour and the like.

If there be any argument for the participation of those who did not contribute to the acquisition, when any thing is gained by an undivided brother, even without the use of joint property, why should it be set aside? It should not be argued, that their participation is denied by the texts of MENU and others (CCCXLVIII). Since the precept of MENU expresses “by labour and skill,” and that of VYÁSA “by his own valour or the like” (CX), and the terms employed in the text of YÁJNYA-WALCYA “property which a man has himself acquired” (CCCLII), may be explained as relating to an acquisition arising from his own skill and exertion, there is no difficulty in affirming, that coheirs are excluded from participation in that only which a man earned by the labour of his own body.

When this question is proposed, it is answered in the negative; for there is no proof whereby the inference can be established. It may be easily affirmed, that the right of participation extends only to that which has been acquired through the means of property appertaining in common to the brethren; but the acquisition being the act of an undivided brother, is not alone a sufficient cause for vesting property in the rest: the cause is the aid received from the joint stock.

Were it so, might not an elder son, who maintains his infant brothers, after the death of their father, out of his own acquired wealth, claim reimbursement from them when arrived at years of discretion? No; for an elder son is as strictly commanded by the law (XII, &c.) to support his infant brothers, as to perform his father’s obsequies.

Again; if the horse used for riding be neither very excellent nor very bad, and the undivided brother, who gains wealth with that horse, be not greatly nor little skilled, nor totally inexperienced; in that case the rest of the brethren shall have one share each, and the acquirer two; and the phrase cited by JÍMÚTAVÁHANA,

VÁHANA, (“two shares belong to the acquirer,”) relates to this case only : in other instances, a rule of adjustment must be formed in due proportion thereto ; for a distribution analogous to that which is ordained by legislators, is just in other cases. By consent of all authors, this rule of decision is only observed in the instance of property acquired by a coheir before partition. According to CHANDESWARA and the rest, the share of wealth gained by learning, which is allotted to a learned coheir, must be regulated in this mode. As for the distinction assumed on the opinion of JÍMÚTAVÁHANA and others, (who admit, *in some cases*, the participation of a learned coheir, who did not contribute to the acquisition of wealth, denominated the earning of science, even though it were gained without using the joint stock,) that the proportion must be equable, because no special distribution is ordained, and because it is a maxim, that, “in the silence of the law, equality is presumed :” that is wrong ; for it would be an unjust disparity, compared with the allotment of a double share when the joint stock has been used.

CCCLVII.

NÁREDA :—If one parcener, be he ever so ignorant, shall maintain the family of a brother studying science, he shall share the wealth which that brother may gain by his learning.

“Shall maintain” being expressed in the singular number, if another brother support the family of one who studies science, by the expenditure of his own *separate* property, and by the labour of his body, he has a right to a share of the wealth gained by that learning. So JÍMÚTAVÁHANA, with whom RAGHUNANDANA concurs.

“Wealth gained by that learning ;” the ignorant brother shall share what may be earned by that science during the study of which he maintained the family of his brother, not wealth gained by any other science. Since “studying” indicates present time, the word being formed by a suffix equivalent to the sign of the present tense, it must be understood that the family is maintained during the same period in which the science is studied. Since
present

present time signifies by acceptation the period of an action from its commencement until the effect be produced, the meaning is, so much time as is necessary from the commencement of the study to its final completion. Accordingly, if some of the acts requisite for the attainment of it be omitted, the man is not said to have learned the science. In like manner, the parcener can only claim a share if he have supported the family from first to last. Since it may be said of a student, "he studies science on such a day within that period," may not a parcener also obtain a share for maintaining the family on that day? In this place, the whole of the acts from the commencement until final completion must be implied: consequently, the ground of participation is the maintenance afforded to the family during the same period, corresponding day by day with that during which the whole of the several acts of reading and studying the science did pass.

"The word being expressed in the singular number, &c.;" then, if two brothers maintain the family by their own labour, and with their separate property, what should follow? They shall receive their due portions of a single share. Both are expressed by a term in the singular number; as the male and female buffalo, or male and female elephant, are denoted by single words. Must not some consequence be necessarily deduced from the use of the term in the singular number? The consequence is, that two shares are not allotted; nor any, if his family were maintained out of the joint stock. Is it not absurd that no share should be allowed when the family is maintained at the common charge, since the ignorant parcener has property in the joint stock? No; for the family of the student has as much right to support from the common estate, as that of the ignorant parcener. It should not be argued, that the student does not personally labour *for the support of his family*, but the other parcener does; and therefore, even though he have not a right to a full share, he may be entitled to half. In a text formerly cited (CIX), "kinsman" is a term used to signify "family and the like;" the text of VRĪHASPATI (XLV) justly allots a greater share on account of good qualities, because they tend to the support of the family; and the precept of NÁREDA (CVIII) directs, that he who is employed for the common benefit, shall be supplied by his brethren with food and vesture: the greater share allotted to him
out

out of the heritage is the reward of his personal labour. However, if the family of the student be supported by a parcener who acquires wealth by asking funds on the account of his father, although he be destitute of hereditary property, that parcener is entitled to receive some part of the wealth gained by learning.

“ Any thing given by a friend ” (CCCXLV and CCCLII) ; received from him through affection ; and if any thing have been given to a friend, and he, accepting the present, make a return to the giver, that also is exempt from partition ; for the present was not made in expectation of a return. But if such expectation were entertained, then, according to the opinion of CHANDÉS-WARA and others, a distribution of the thing received must be admitted ; for the term, “ given by a friend,” signifies on account of friendship : now this was not received from him on account of affection, but on that of a gift made. But when mutual friends present to each other tokens of regard, he who first makes a present knows that the other will make a return ; he who accepts it, reflects, “ he has given me this, I will make a return ; ” is any thing which is so received partible or not ? The answer is, the gift was necessary, independent of the expectation that he would make a return ; for, had the present been withheld, his friendly regard would have been forfeited : things so received are therefore exempt from partition, even though mutual gifts were presented. But if a man make a present exceeding his means, through mere avarice, on pretence of affection, in the expectation of receiving a greater return, or with intent to defraud his coheirs, whatever shall be given to him by his friend is partible : common sense supports this inference.

MENU explains wealth received on account of marriage.

CCCLVIII.

MENU :—What is received with a damsel equal in class, at the time of accepting her *in marriage*, let a man consider as wealth received with the maiden : it is deemed pure, and promotes increase of prosperity :

2. But let him know that to be received on account of

of marriage, which is accepted by him with his bride: all such wealth is considered as vindicating the solemn rite.

“Equal in class;” of the same tribe: this is mentioned for the purity of the wealth so received; even that which is accepted on account of a marriage with a woman inferior in class is exempt from partition. “At the time of taking her *in marriage* :” this is a general instance comprehending any earlier period; for what is then given is pure, exempt from partition, and received on account of the maiden. “Accepted with his bride;” what is bestowed on the bridegroom, *when* conducting her *to his home*, after the celebration of the nuptials. What is given to him by his father-in-law and the rest after the marriage, must be considered as a mark of respect presented to a guest (*mād’huparca*).

A present (*mād’huparca*) of honey, curds, and butter, in a vessel of zinc, is the honour shown to a guest and the like: what is received with that token of veneration is *mād’huparca*. Consequently, a man should present to a venerable person who comes to his house, an *arghya* (or clean rice and *dūrvā* grass in a vase made of conch, and containing water), a vessel of water to wash his feet, a cow and the like, as directed in the *Mahābhārata*; “let him present a cow and an *arghya*.”

In all these cases, it is possible that joint property may be used; for the giver may entertain this expectation, “I will now gratify him *with presents*, hereafter he will honour me *with gifts*.” However, if joint property be dissipated by an expence exceeding the law, the giver’s means, and general usage, for the sake of a subsequent gain; in no such case is the wealth which is gained exempt from participation. But if the expence conform to the law, to the donor’s means, and to usage, the wealth received by him is indivisible, according to CHANDÉSWARA and the rest, even though joint property have been used; *but*, according to JÍMÚTAVÁHANA and others, it is partible.

He who with the assent of the other sharers recovers what had descended from his father and paternal grandfather, and had been forcibly taken by others, shall not give it up to the rest of the coheirs. Thus RAGHUNANDANA, commenting on the text of YÁJNYAWALCYA (CCCLII 2). The ground on which their
consent

consent is here required, is an expression used by the author of the *Mitâcshura*; “*what he thus recovers for his sole benefit, with the acquiescence of other sharers.*” But that is not approved by CHANDÉSWARA and the rest: they hold, that the assent of coheirs is not requisite, since no words of such import occur *in the text.*

If five undivided brothers intend to recover a chattel which had belonged to their grandfather, but has been seized by a stranger, and was not recovered by their father by reason of his inability, and they wait an opportunity, remembering the words *of the poet*, “*Manliness succeeds, O king! in due season, by the power of destiny;*” in the mean time, one very cunning parcener resolutely attempts the recovery, and, through the influence of his good fortune, the end is accomplished: that the thing recovered should in such a case be exempt from partition, is an absurdity objected to the opinion of CHANDÉSWARA and the rest. However, we hold it reasonable, that silent neglect on the part of the other brothers should be deemed requisite *to the forfeiture of their right of participation.* But, in this case, it is held by the *Mitâcsharâ*, RAGHUNANDANA, and the rest, that the property shall be distributed *among the coheirs*, if it have not been silently neglected *by them.* Still it appears, according to this opinion, that the partition shall be made, after giving a fourth part to him who recovered the property. The allotment of a quarter is directed by the text of SANC’HA, in the case of land: this is remarked in the works of RAGHUNANDANA and JÍMÚTAVÁHANA, where it is said “*SANC’HA propounds a distinction in respect of land.*”

CCCLIX.

SANC’HA:—But land which had formerly been lost, and which a single heir shall recover by his own exertion, his coheirs may divide according to their allotments, having first given him a fourth part of it.

By premising that he propounds a distinction in respect of land,

land, it is intimated, that a fourth part shall be allotted in the case of real property, the recovery of which had been neglected. A fourth part of so much land as is recovered, for instance, a hundred cubits out of four hundred, shall be taken by him who recovered it: those who did not co-operate therein, whether five, seven, or ten brothers, shall take *the remainder* of the land, measuring three hundred cubits *in the instance above mentioned*. This appears to be the rule of adjustment, from the terms of the text, "the other coheirs." But this might be an unjust disparity; for if one of two brothers regain property, and the other contribute not thereto, he who did not co-operate would have three quarters, and he who actually recovered the property, one quarter only. The term "other coheirs" is therefore indeterminate; or it may be definite, as it relates to their making a distribution; not to their *exclusive* receipt of shares. Consequently, they shall divide *the residue* according to the number of brothers, including him who effected the recovery*. Or the words may signify, "the other coheirs also *may divide the land*;" and the number of shares would consequently be one more than four times the number of brothers; out of which, he who regained the property shall take five shares, and the rest four each: a fourth part therefore signifies the quarter of a full share. It must be acknowledged, that if the coheirs be numerous, he who effected the recovery ought to receive less than if they were few; in like manner as in the case of property acquired by himself with supplies out of the estate. If two brothers regain the property, they shall take one fourth part to be shared between them; for it would be unreasonable that they should receive a greater allotment, since the recovery was a single act done by both.

Admitting this in the case of land recovered, still there is no proof that he who effects the recovery shall receive a fourth part of gems, or the like, when no neglect is *imputable to the other coheirs*. This should not be affirmed; for he who regains the property must have the reward of his labour. It should not be asked whence the allotment of a fourth part is deduced. The rule established in the instance of land must be extended to the present case, because it is a maxim that the principles of law are to

* This seems the most equitable; the acquirer has a fourth of the whole, and his regular share of the remaining three fourths. T.

to be applied uniformly in all consentaneous cases. Nor should it be asked, why may not the rule of allotting a double share, which is established in the case of an original acquisition made without using the joint property, be applied to this? The labour requisite to remove a defect in a thing already done, is light in comparison with the labour necessary to effect a thing not yet done. But if he successfully attempt the recovery of the property, against the warning of the other coheirs to wait a fitter opportunity, he shall not receive a fourth part, *but his simple share of the general distribution*: such is the inference of common sense.

This text of SANC'HA (CCCLIX), cited in the *Mitâcsharâ*, is unnoticed by CHANDÉSWARA, because it has been omitted in the *Smṛiti-mahârnavâ*, *Câmadhênu*, *Calpateru*, *Pârijâta*, and other works. It has been noticed by RAGHUNANDANA and JĪMŪTAVĀHANA, because it is found in the *Mitâcsharâ*.

But others hold, that, even admitting the authority of this text, land is there an instance of a general meaning; and *the precept* relates to the case where the coheirs had not silently neglected the assertion of *their claim*; but if they neglected it, the property recovered by a single coheir is not partible, even though it be land.

“Wealth acquired by learning,” in the text of VYĀSA (CCCXLVI), signifies the acquisition of science; and that, as above mentioned, is wealth gained, without using the joint property, by learning attained after a maintenance provided by one of a different family, and so forth. Such is the interpretation of JĪMŪTAVĀHANA and the rest. According to CHANDÉSWARA, and others, it is wealth gained by science attained after a maintenance provided by a stranger, a prize having been offered by some third person for the proof of superior learning, whether supplies be or be not received out of the common estate during the acquisition. The following text explains the earnings of valour:

CCCLX.

MENU:—When favour is shown by a leader, pleased with a gallant action which a soldier performs, well knowing his danger:

2. What-

2. Whatever is then received *as a reward* shall be considered as *wealth* gained by valour: *that*, and what is taken under a standard, are declared not to be partible:
3. What is taken in war, after routing the force of the enemy, by a soldier who risked his life in the service of his master, is named *spoil* taken under a standard.

These texts are again cited *in this place* to subjoin the explanation of the sense*. “Well knowing his danger;” aware of the risk to *which he exposes* his life. “Gallant,” with resolution. “Action;” the service desired by his master, such as the slaughter or discomfiture of the enemy, and the like. Does not war universally cause risk of life? *The answer is, service, in the presence of a powerful foe, is intimated by the mention of danger.* “When favour is shown by a leader, pleased with such an action, &c. ;” consequently, wealth received by *the favour of the chief* is alone described by this text as the earnings of courage. “And what is taken under a standard;” the particle connects this with the acquisition of valour before mentioned, which is thus declared not to be partible. “By a soldier who exposed his life in the service of his master;” who disregards the risk of his life in comparison with the service of his employer. Hence, what is plundered from the army of the foe, having routed the hostile force after a tremendous conflict, is spoil taken under a standard. Both these are technical terms for certain *descriptions of* wealth. According to CHANDÉSWARA and others, they are not partible, even though joint property had been expended before battle, for the purpose of obtaining favour from the chief. In either case, no partition can be *claimed*, even though a horse or the like, appertaining to the coheirs, contributed *to the acquisition*. In the case of skill with the bow and the like, a share must be given to a parcener no less skilful, as in the case of agriculture, to *such a husbandman*; for, though expert, he has no superiority *over another skilful coheir* in capacity for an act of dexterity. But, according

* I prefer inserting them here, and have therefore omitted the former quotation. T.

according to JÍMÚTAVÁHANA and the rest, this is intended as an example: if the joint property be used, wealth acquired by these means is partible.

The term (*śaudāyica*), which occurs in the text of VYÁSA (CCCXLVI), signifies what is received from a father or other (*śudāya*) affectionate kinsman. So NÁREDA (CCCLIII*), and VYÁSA (CCCLIV). Property received at the time of accepting a bride, is "wealth given by the kinsmen of a wife" (CCCLIII 1); for this coincides with the text of BHARADWÁJA, "and that which was received with a bride." The apposition is not in that form which is called *tatpuruṣha* of the sixth case, and which would exhibit, as the sense of the compound, "property of the wife;" for it could not be supposed that brothers can claim partition of wealth which belongs exclusively to a woman. Such is the opinion of authors.

"A mother has also power *over her own*" (CCCLIII 2); this regards female property. Thus the *Retnācara*. It may also relate to an estate left by the paternal grandfather, and which had devolved on his daughter *by the failure of male heirs*; for she alone is then proprietor of that wealth: although her gift *or other alienation of such property* be forbidden, as will be mentioned under the head of Succession to the estate of a man who leaves no male issue, what is given *by her* to her son, on account of his *filial* piety or the like, is a valid gift. But although the wife have an interest in the wealth of her husband during his life, under the text which declares property common to the married pair (CCCCXV), his wealth given away by her is not a valid *donation*; for she has not at that time independent power over his estate.

The dependence of a woman whose husband is living, even in respect of property inherited from her father, who left no male issue, is only suggested by the text of MENU (Book II, Chap. iv, V. 56); it will be mentioned, that women are independent in respect of female property only: as the wealth of her living husband is declared by the text of the legislator to belong to both, does not that which is gained by the wife in right of birth, or through personal labour, equally belong to both? VÁCHESPATI BHATTÁCHÁRYA does not acknowledge the right of the husband

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* Both verses were cited in this place; I have inserted them in the place where the first verse was quoted. T.

band in the property of his wife during her existence, nor her's in her husband's property during his life: for the text relates to another subject, namely, to *wealth* given away. But those who admit both, affirm the right of the husband, controlled by his wife, in that which is acquired by her; and the right of the wife, controlled by her husband, in his wealth; and they also affirm her subjection to him in respect of her person and so forth: hence they say, any thing given away by her, without the assent of her lord, is not a valid gift. But others assert, that it is valid, like *disbursements made by a wife for the service of guests and the rest*. It should not, *they think*, be argued, that her husband has given a general sanction to *her disbursements for the service of guests or similar purposes*, and therefore the expenditure is legal: but, in this case, since assent is wanting, how can the gift be valid? It is the general practice to do so, *say these lawyers*, even though assent be wanting. That *inference* does not seem consistent with the law; but, if her husband did assent, any thing given by her through favour is indisputably a valid donation: in this case, however, the tacit assent of her lord must then only be inferred, when the father, subsequently informed of a gift made *to his son* by his wife unauthorized by him, expresses no disapprobation, but *on the contrary* says, "let her do as she pleases." Both in this case and in that of wealth given by the father, it should be remarked, that any gift made or approved by him, under the influence of lust or wrath, is not valid; but, any donation made or confirmed by him through tenderness, with due consideration of good qualities, and of religious duty or the like, is good in law.

As for what *some* deduce from the use of the word 'father,' and other terms expressing relation, that what has been given by any other person is partible, (namely, what is received from any other except the father and the rest, without using the joint estate;) that has been already disproved: but, this *text* using the word father, which denotes relation, is an answer to one who entertains a doubt, "may I not share the wealth given to thee by our parent (or other relative), since it is the wealth of my father (or other kinsman)?" Hence it is said in the text of VYÁSA, "that shall not be claimed by coheirs" (CCCLIV).

If the same thing, already given to one son, be given a second time to another, he to whom it was first given shall alone take it;

it ; under the text of YÁJNYAWALCYA “ in the case of a pledge, a gift, or a sale, the prior contract shall prevail ” Book II, Ch. ii, V. 28.)

RAGHUNANDANA.

CCCLXI.

MENU :—After the death of the father, if the eldest brother acquire wealth *by his own efforts, before partition*, a share of that *acquisition* shall go to the younger brothers, if they have made a due progress in learning.

As for this text of MENU, the meaning is, since they are placed in a relation similar to *that of* father and son, by a former text (XII), the youngest brother has a claim on the wealth of the eldest, even though acquired without the use of the patrimony, as *he has* on the wealth gained by his father : in respect of this, a distinction is propounded by the text ; even unlearned brothers have a right to wealth acquired by their father ; but learned coheirs only have a claim to that which is gained by the eldest brother : and this is demonstrated ; for the terms of the text (“ after the death of the father,” “ the eldest brother,” “ the younger brothers,” “ if they have made a due progress in learning,” and so forth,) would *otherwise* be unmeaning. Such are the very words of JÍMÚTAVAHANA. This relates to wealth not acquired by learning ; for, property gained through science, by a younger brother, during the life of his father, must be also shared with an elder one who has made a due progress in learning. But, in the present instance, no discrimination of equal or less attainments in science is made by the legislator.

At this time, since an elder and younger brother do not now behave as father and son, it appears that this rule should not be observed. On this subject JÍMÚTAVAHANA remarks, that partition of any thing received in donation without having used joint property, as it is now practised among good men, is not without some foundation in brotherly affection and human wisdom : or, if another ground of the present practice be *affirmed*, (*namely*, that *coheirs*, seeing wealth which had been received in donation distributed, because it was the acquisition of science, and because

partition among brothers, equally or pre-eminently learned, is ordained in the case of wealth earned by knowledge, even without the use of joint property; and not knowing that this partition of effects so gained was specially made on account of learning, but erroneously supposing it made *merely* because the wealth was acquired before partition; have themselves introduced this practice:) still there is nothing groundless. It is his opinion, that partition made solely because the wealth was acquired by an undivided parcener, is founded either on affection, on human *institutions*, or on *habitual* error.

SANC'HA and LIC'HITA propound other things not subject to partition:

CCCLXII.

SANC'HA and LIC'HITA :—There is no division of a house or garden *made by one son for himself*, nor of water-pots, ornaments, utensils *for food and the like*, nor of concubines or clothes, nor of water *in pools or wells*, nor of pasture ground and roads: so *said* the lord of created beings.

The place of abode; “the house.” Consequently, if five brothers, during the life of their father, sleep, eat, and so forth, in five separate and distinct houses; in that case, when partition is made after the death of the father, each shall retain his own apartment; lots shall not be cast *for those habitations*. But if there be not five houses, then only shall they make a distribution; and, after allotting the former dwellings in the order of seniority, other houses ought to be built *for the younger brothers*: but, if the disparity be excessive, an actual partition must be made. This is *consistent with* common sense.

Of water-pots or metallick vessels for water, personal ornaments, utensils, (literally what is adapted for use, or what is employed,) of concubines or clothes applied to the use of one parcener, it appears that there shall be no division.

The *Retnâcara*.

The term used in the gloss (*lauba*), signifies any metallick vessel; for it is so explained in the dictionary of AMERA. Consequently,

sequently, each parcener shall now take that water-pot which he used during the life of his father: lots shall not be cast for it. This *takes place* if each individual be provided with vessels, and if the disparity be not excessive. Such is the reason of the law, and the *subsisting* practice.

“Ornaments;” not such as have been given through favour, but such as were worn by each. Here again excessive disparity must be avoided. But, if any ornaments remain in the treasury, and are sometimes worn by any one parcener during festivals, such ornaments shall be shared even by him who did not wear them; for it is not understood that these belong exclusively to him who occasionally uses them. It is the same in the case of clothes. But since partition could only have been supposed on the day when the parcener first began to wear them, with the assent of the father, of the elder brother, or of the spiritual counsellor, expressed in these words, “let him wear this apparel or these ornaments,” therefore the clothes and the jewels belong exclusively to that *parcener who habitually uses them*.

“Nor of water *in pools or wells*, nor of pasture ground and roads;” the whole phrase, *according to one reading* (*apâm prachârât’ha*), may signify the channel for the issue of water, and which is called a drain. RAGHUNANDANA reads *apâm prachâra rat’byânâm*; *rat’byâ* signifies a road, the way by which men and cattle pass and repass. If the channels for the passage of water can be formed in separate places, a division is unexceptionable. It is not declared necessary that the water should run, by the former drain, through the court belonging to any one brother: but if all the parceners point out that channel, *it must remain in common*. Such is the inference of common sense.

CCCLXIII.

MENU and VISHNU:—Apparel, carriages, or riding horses, and ornaments of ordinary value, which any of the heirs had used by consent before partition, dressed rice, water in a well or cistern, female slaves, family priests, or spiritual counsellors, and

pasture ground for cattle, the wife have declared indivisible, *and still to be used as before.*

“Apparel ;” clothes for personal use. JÍMÚTAVÁHANA.

“Carriages ;” the term (*patra*) is expounded by CHANDÉS-WARA property recorded in a writing ; for that coincides with the text of CÁTYÁYANA (CCCLXV 1). The meaning is, property recorded in a written statement of his own affairs, by the father or other predecessor, *in this form*, “so much given to such a one.” HELÁYUDHA, the author of the *Pracāśa*, JÍMÚTAVÁHANA and others expound it, a horse or other animal used for carriage. AMERA explains the word *patra* “carriage or conveyance, leaf, feather, arrow.”

“Dressed rice ;” JÍMÚTAVÁHANA expounds the term (*crī-tanna*) sweetmeats or the like ; the *Retnācara* explains it flour or similar things ; the *Pārijātā* expounds it rice or other food. In fact, all these interpretations should be admitted ; for all may be comprehended under the term “and the like.” Consequently whatever has been provided by a father for the food of his own son or daughter, or other relative, is exempt from participation.

“Water ;” except that which is contained in a pond or well ; running water. Thus JÍMÚTAVÁHANA. But, in fact, no partition is made of a single well or the like ; for VRĪHASPATI propounds another mode of participation therein. It shall not be divided like other things ; such is the meaning of MENU and VISHNU. In like manner, his own property, recorded in an inventory as above mentioned, shall not be divided. Some explain “water,” vessels used therefor, as mentioned by SANC’HA and LIC’HITA (CCCLXII).

“Female slaves” employed by one parcener. Thus the *Retnācara*. Consequently, the parcener who employs a female slave shall retain her. This rule is observed when the slaves are numerous, and the employment continual. It is founded on the coincidence of the text of GÓTAMA (CCCLXVII). The term used (*sambhōga*) here signifies employment, such as rubbing his limbs or the like. The word which occurs in the text (*śrīyab*), may signify “women other than female slaves.”

The subsequent terms (*yógacśhéma prachāra*) are explained by JÍMÚTAVÁHANA, the bed and vessels used in eating, drinking, and so forth. In the *Retnācara* the same words are explained family priests, or spiritual counsellors, and the road by which cattle pass. According to this interpretation, one term must be read with a final M (*yógacśhémam*). Or the apposition may be in the form called *carmad'hāraya*, instanced in the expression 'king fond of pot-herbs;' "the path together with the family priests." The same term is explained in the *Pracāśa*, hereditary livelihood in the king's family or the like; that is, performance of sacrifice, service in war, the sale of cow-tails and similar articles *for the king's use*, menial service, and so forth. It is customary to distribute the privilege of sacrificing *for the king* and the rest, by regulating the periods of *separate enjoyment*, such as a month each, or the like. HELÁYUDHA subdivides the term; a boat or similar conveyance (*yóga*), and a fort or other place of safety (*cśhéma*). All these things, mentioned by various authors, are in certain instances exempt from partition.

CCCLXIV.

VYÁSA :—A place of abode, vehicles, prepared grain, water, and women, shall not be divided; nor a place of sacrifice, *nor an idol*, even though it had been transmitted from father to son for a thousand generations.

"A place of abode;" *literally* a field: the house and garden. Thus CHANDÉSWARA. Others expound "field," a piece of ground which is the common site of habitations. "A place of sacrifice;" the spot where religious rites are performed. So JÍMÚTAVÁHANA. Sacrifice signifies the worship of deities.

CCCLXV.

CÁTYÁYANA :—Property recorded in a written document,

cument, and that which has been appropriated to religious uses, water, wives, and a corrody which has descended from ancestors,

2. Clothes of great value kept in the treasury, ornaments, and whatever is naturally indivisible, shall be used alternately by the kinsmen during periods assigned to each.

3. Pasture ground for kine, a common way, apparel, and whatever else is worn on the body, necessary implements of learning, *as books and the like used severally*, or of arts, *as pencils or tools*, are indivisible, according to VRIHASPATI, *but if no other property remain, must be sold, and the price of them must be distributed.*

4. But BHRIGU declared, that whatever customary law of a country, a class or tribe, a company of *merchants and the like*, or of a town, should be alleged and proved, the distribution of an inheritance must respectively be made according to that custom.

“Property recorded in a written document;” wealth given away or promised to any one on a religious consideration. Or property recorded in a written document, (that is, a debt,) which was lent for religious purposes, is not partible. “Water;” jars used in the worship of deities. Thus the *Retnâcara*. “A corrody;” a pension which is assigned (*nibadhyaté*) by the king, on a mine or the like, (that is, a pension which is fixed as it were by words, or which is made irrevocable,) is a corrody (*nibandha*): the suffix bears the passive sense. Or the same inflection may bear a neuter sense; thus, “ten certain things shall be received by you from this mine for such a space of time,” and so forth*. In like manner, the rights of *Brâhmanas*, who attend at funerals,

* The explanation exhibits no neuter sense. T.

als*, and similar privileges, must be considered as corrodi-
 The immunities of a *Brâhmana*, who burns dead bodies, and
 other similar rites, are in a manner fixed in perpetuity : but there
 is this difference, that he receives his dues as the reward of his
 trouble. “ Descended from ancestors,” is merely illustrative ;
 for the reasoning is equally applicable to what has not been in-
 herited.

“ Clothes kept *in the treasury* ;” and bearing a great value.

The *Retnâcara*.

“ What is naturally indivisible ;” what is incapable of division,
 as a tree or the like. These things above mentioned are declared
 exempt from partition, because an actual division is almost im-
 practicable. For a corrody, or the *future* receipt of ten certain
 things or the like, or the promise thereof, cannot be parted ;
 it is therefore pronounced indivisible : but the ten things re-
 ceived as the produce of it shall be distributed, as will be men-
 tioned.

“ Pasture ground for kine” (CCCLXV 3) ; the path of
 cattle †. “ A common way ;” a road used by men and women.
 Such is the difference.

“ Apparel” of small value, and whatever else is worn on the
 body. Thus the *Retnâcara*. There is consequently no vain re-
 petition. The meaning is this : whatever apparel is used by
 any one parcener, that vesture worn on the body shall be taken
 by him alone ; lots shall not be cast. But apparel of great value,
 adapted for attendance at the royal court, must remain in com-
 mon ; for if it were taken by one parcener, the rest would be
 prevented from repairing *occasionally* to the royal residence. But
 if there be much *valuable apparel*, partition is unexceptionable.
 After selling or otherwise disposing of unworn clothes, they may
 be repurchased, or otherwise regained, by paying the value out of
 several property : on this consideration, the legislator has added
 “ worn” (CCCLXVI). Others expound the term (*dhritam*)
 kept in the treasury. It is indivisible ; partition will be of course
 forbidden, *because it cannot be parted* : but what is worn on
 the

* *Agrahârica*. See Book II, Chap. iii, S. 2. T.

† The word *prachâra* also signifies pasture ground : I follow Sir William
 Jones in so translating it. T.

the body shall not be *even* shared, by selling it, and dividing the price : to intimate this, say these lawyers, apparel is again mentioned.

“ Necessary implements of learning ;” the term (*prayōjya*) is explained by HELÁYUDHA, a loan advanced ; a sum necessary to be invested in traffick or the like. For instance, a hundred pieces of money being appropriated to the commerce of a merchant, traffick is conducted on that capital in a remote province, by means of navigation ; if that be divided among his sons, suppose ten brothers, no one of them can *afterwards* carry on a similar trade : some lawyers so explain *the precept*. The same term is expounded, things required for use, as books or the like ; these shall not be shared by ignorant coheirs, whether to sell or merely to use them : it is so affirmed in the *Párijāta*, the *Retnācara*, the treatise of JÁMÚTAVÁHANA, the *Dāyatatwa*, and other works.

“ Necessary implements of arts ;” as pencils and the like. Thus the *Retnācara*. But HELÁYUDHA explains the word “arts” as signifying means of subsistence in general ; books, pencils, and tools, required for that purpose, must therefore be comprehended by this term.

CCCLXVI.

VRIHASPATI :—They by whom it is affirmed that clothes and the like are indivisible, have not proved that the collected wealth of opulent men, their vehicles and ornaments, shall not be divided ;

2. Property held in common *would be* unemployed, for it cannot be given to one *in exclusion of another* : therefore it must be divided by *some mode deduced from* reasoning ; else it would be useless.

3. By the sale of clothes and ornaments ; on the recovery of a written debt ; by compensating the dressed

dress'd food with *an equal allotment of* undress'd grain; an *equitable* partition is made:

4. Water drawn from a *single* well or pool shall be taken by turns; a bridge and a field shall be shared *by coheirs* in due proportion:
5. Let a *single* female slave be successively employed by coheirs in their respective houses, according to their several shares; if numerous, the slaves shall be distributed in equal allotments: such is the law in respect of female servants:
6. The benefit received from family priests, or spiritual counsellors, shall be equally shared; and the pasture ground for cattle shall be used by the coheirs in proportion to their allotments.

From this text of VRĪHASPATI it appears, that the indivisibility of clothes and the like is founded on the letter of revealed law, not inferred from its sense. The same may be affirmed to be the import of the precepts of legislators. Thus, partition of clothes and the rest, if casually made, cannot be imputed as a fault. "*It is not proved, that the collected wealth of opulent men (the vehicles, ornaments, houses, and other property of those who have many dwellings, many carriages, and so forth,) is indivisible.*" This word is brought forward with the *necessary* alteration of gender and number. Consequently the houses, ornaments, and the like, must be distributed by an *actual* partition, or by selling them and dividing the price. Such is the sense of the text.

"Property held in common would be unemployed;" it would be unused: a single chattel, appertaining to two persons, would not be put to use; neither of them could employ it: *for* it cannot be given exclusively to one, since another is part-owner of it. Therefore must it be divided by *some mode deduced from* reasoning; else (if a rational distribution be not established) it would be useless; *for* it could not be employed by any one. An argument is here deduced from the absurdity of the converse proposition.

In the text of CĀTYĀYANA (CCCLXV), property recorded in a written document (that is, a debt,) is pronounced indivisible; and so are clothes, ornaments, and the like. But apparel and the rest may be sold, and the price of them distributed; and a debt, when recovered from the debtor, shall be shared. That partition of dressed grain shall not be claimed, is declared by MENU, VISHNU, and VYĀSA: but if all the coheirs have not *received* prepared food, but one alone *have*, an equal share of undressed grain shall be given *to the rest*. If there be but one well, or one pool, a distribution by partition of the water and the like must be admitted; and a dyke shall not be made in the middle of the pool. “By turns;” if the pond contain little water, and all the wants of all the coheirs cannot be supplied, let them each draw ten or five jars of water; and, fetching further supplies from other places, satisfy their other wants: and this must be done with consideration. A field is pronounced indivisible by VYĀSA, because the section of it is literally impossible; but, although it cannot be cut, it may be parted by a ridge: therefore does the legislator add, “a field shall be shared in due proportion” (CCCLXVI 4), and that in the case of a single field uniform in its fertile quality; but if there be many such, there is no necessity for parting one by a ridge. The partition of a garden, and of houses, shall be similar to that of a field. A single female slave may be shared: the mode of distribution, proportionate to their respective allotments, is by a computation of labour; for instance, ‘let this female slave sweep all their houses, prepare food to be eaten by all, and make all their beds;’ here it is evident there can be no disparity: or by a computation of time; for instance, she must work in each house one watch every day, or five or six days in every month, and so forth. If they be numerous, one or two female slaves shall be allotted to each coheir. In this case, the rule propounded by GÓTAMA must be observed.

CCCLXVII.

GÓTAMA:—A female slave shall belong exclusively to that parcener by whom she is possessed.

But

But if many be possessed by one parcener, and none by another, the number must be made equal. No dispute should be excited for any small difference in age, strength, and good qualities. Such is GÓTAMA's opinion. This must be considered as the settled rule respecting female slaves (CCCLXVI 5).

Of counsellors and family priests, or (according to the variance of opinions on the sense of the words *yōga cshēma*) of the hereditary livelihood, or of a boat and fort or the like, or of vessels for eating and drinking and the rest, an equal distribution shall be made ; that is, by equal numbers *allotted to each*. Consequently, that which is severally adapted to the business of each, shall be taken by him : but in case of inequality of number, or great disparity, some compensation must be given to another *parcener* ; the distribution shall not be made by casting lots. Hence this does not contradict MENU and the rest.

CHANDÉSWARA observes, that valuable clothes and the like are pronounced naturally indivisible ; hence the indivisibility propounded by MENU and the rest, which forbids the literal division of apparel of ordinary value, must be considered as relating to partition in any other form except that which is directed in the case of valuable apparel. There is no discrepancy.

Consequently other Sages have pronounced these things indivisible, on a consideration of the revealed maxim which shows their indivisibility : but the legislator, having mentioned the absurd consequence of a general denial of partition (CCCLXVI 2), establishes the inference that a distribution shall not be made by actually disparting the things, and regulates a virtual partition to be deduced from that revealed maxim. Such is the meaning of the gloss.

But the author of the *Pracáśa* thus expounds the text : it is not proved by them that the scriptural precept, "divide not clothes," relates to vesture of ordinary value. "The property of opulent men ;" that is, such things as can only be taken by opulent persons, *namely*, goods bearing a high price, must be divided *in a mode deducible* from reasoning ; because they cannot be yielded to one parcener. But things of ordinary value may be given up, for they are *mere* chaff. Consequently the precept, "divide not a vehicle, or beast used for a carriage," relates to an elephant, horse or the like. Such is VRĪHASPATI's meaning. But

But if the elephant or horse be single *in its kind*, a mode of distribution is propounded ; by sale, &c." (CCCLXVI 3).

Others consider the text of VRĪHASPATI as an instance exhibited. The phrase, " must be divided by *some mode deduced from reasoning*," is merely an illustration. Consequently, if there be reason to apprehend the destruction of the thing, should an *actual* division be made, then the scriptural maxim bears that no such partition shall be made : but if that apprehension be not entertained, as in the case of an ingot of gold or the like, then an actual division shall be made by the universal consent of legislators. *If it be alleged, that* partition, in the case of numerous *elephants, horses, or vehicles*, is propounded by no legislator, in consequence of the scriptural maxim "divide not a vehicle," that is affirmed grossly without *due* inquiry. Hence there is no disparagement to MENU and the rest ; but otherwise they might be supposed to be disgraced by an assertion deficient in just reasoning. Consequently there is no harm in making a partition when the number of *similar things* is great. Even a single chattel must be shared by sale *and distribution of the price*, or by regulating the periods of enjoyment. It is not meant that female slaves and the rest may not be sold, nor that apparel and the like may not be used *by turns* at regulated periods, nor that a debt shall only be divided when recovered from the debtor : accordingly, although it may not be immediately recoverable, it is the practice to distribute such claims by figures. Of clothes, inconsiderable in value, and worn *by one parcener*, a partition may be made, as *in the case* of dressed grain, *by giving an equivalent to the rest*. Valuable apparel may be divided, by selling it, *and distributing the price*.

According to JÍMÚTAVÁHANA, "women," in the text of MENU (CCCLXIII), signifies 'women other than female slaves.' He conceives that MENU, VISHNU, and VYÁSA, deny the partibility, which might be supposed, because wives separately obtained in marriage are gained at the expence of the joint-estate. It should be here remarked, that of wives there is no partition even by equity, *or in the mode deduced from reasoning* ; for a woman, however obtained, is declared by MENU (CCLII 4) to belong exclusively to her husband. It should not be argued, that, like dressed grain, the share shall be made good by

by providing another damsel *for the coheir*. Although joint property may have been used, a share need not be made good; for joint property *in a wife* is not acknowledged. For that sole reason, women are pronounced indivisible. In fact, female slaves only are denoted in a strict sense by that term, for partition by equity is propounded by VRĪHASPATI for them only; but of wives a partition could not even be supposed, since they are not common to the coheirs.

Consequently, when a father or other predecessor dies, a right vests in all the heirs, as is acknowledged by RAGHUNANDANA, over all which belonged to him, gold and silver ingots, female slaves, kine, and the like; for the cause is uniform. Hence, since it might be supposed that every thing shall be disparted, therefore legislators have forbidden the division of certain effects; and VRĪHASPATI has directed a distribution, by allotting one entire thing to one parcener, and another entire thing to another parcener, and so forth, if the *similar* effects be numerous; and by regulating the periods of alternate enjoyment, or by sale or otherwise if the chattel be single. After disparting an ingot of gold, or the like, the former right being divested, the property of the several portions vests in each brother by the help of lots cast, or by other means; for the integrant parts of the thing which belonged to the father, or other predecessor, *are separated* like the *fragments* of a broken jar or the like. It should not be objected, that such is not the sense of the law; but the meaning is, that a thing shall not be disparted, when partition can be made by distributing an equal number of such things *to each parcener*; in proof of which the existing practice is alleged. Were it so, there would be an impropriety in VRĪHASPATI mentioning the equal distribution of numerous female slaves, when he is treating of partition by the equity *of the precept*. But the practice is current even in the case of gold and silver ingots, because partition, without breach *of an integral*, is observed in the case of gold and silver coins, apparel, kine, buffaloes, and the like. Nor should it be objected, that, if the act of disparting alone constitute partition in a legal sense, cattle and the like must be dislevered, since no legislator has pronounced them indivisible. They are declared so by CĀTYĀYANA, “whatever is naturally indivisible” (CCCLXV 2). But, here, any thing which cannot be literally divided

divided must be distributed by *the equity of the precept*; and in the instance of those things, of which partition is separately denied, such as a female slave, a water-pot, or the like, solely enjoyed by one parcener, compensation is made by an equivalent. In the case of books and similar things required for use, all may claim the benefit of them, although they remain in common. In such a case, if one of five brothers be illiterate, he obtains no share of the books: but his son, if learned, may claim the use of them; if he be also illiterate, he obtains no participation.

Should five or seven generations pass thus, and afterwards one *descendant* become learned, shall he obtain his share or not? Although they be called indivisible, still a right devolves on him, since the books were *successively* the property of all his ancestors. It should not be objected, that the right stops with the fourth in descent, under the text of DÉVALA (LXXXI). For it may be reconciled by considering it as relating solely to that property which is not pronounced indivisible; else, if all the brothers and all their descendants be illiterate, these books would become a waif after the fourth generation. If the right of property subsist in one case, although the thing be indivisible, it subsists equally in the present instance. In this manner, if the eighth in descent be able to use the books, they would be refused by the rest through knavery, or because the library is in their possession. There are not consequently any means of preventing illegal acts.

Again; if a learned coheir, taking a book which cannot be possessed by the illiterate parcener, sell it, what is the rule in that case? Some thus reconcile *this seeming difficulty*: if the books have not been used through four generations, there can be no subsequent claim, as appears from the text *above cited* (LXXXI). If the learned parcener sell it *earlier*, the coheir is entitled to receive his share; for the books and the rest are alone pronounced indivisible, not their price. But others hold, that property is only divested by silent neglect through four generations, not without neglect; else a thing bailed to any other person, and not enjoyed by one of the parceners during four gradations, would become a waif; consequently their property subsists through successive generations. Having no occasion for its use, the owner does not keep a thing in his possession; but he should bail it, previously taking an attested writing. At present, from apprehension

hension of fraud, even books and the like are brought into partition ; but that is not deemed legal in the *Párijáta*, *Retnácara*, *Dáyatatwa*, and other works.

In the present instance, the form of a distribution by the equity of the law is this : after making a written *catalogue*, the books should be distributed in the respective houses of all the coheirs ; the whole library should not be placed in the house of one of the parceners. In fact, the work of carpenters and other artisans would be impeded, if no partition could be made of the axes, hammers, and other tools ; but if they be distributed without giving any share to one who is ignorant of the art, his son could not *afterwards* obtain his allotment : the skilful brothers should therefore divide the tools, and follow the profession ; but if the son of an undeserving brother afterwards become skilful *in that profession*, he may claim a fresh partition. If any tool have been spoiled or destroyed by use, let that be relinquished, and the remainder shared with the son of the undeserving coheir. But should these brothers, who are skilled in their art as carpenters, sell any tool, they must, when the sale is afterwards discovered, give a share of the price ; but they are not in this case liable to a fine.

According to HELÁYUDHA, books and the like are subject to partition ; for he does not enumerate them among indivisible things, but explains the term (*prayōjya*) as signifying a loan *advanced*. This opinion seems accurate ; for VRĪHASPATI has not noticed the equitable distribution of books and the rest. But it would be indecorous to contradict the *uniform* assertions of many authors, *from* CHANDÉSWARA and the rest, down to the modern learned descendants of learned ancestors. For this reason has the subject been here noticed. Lawyers thus describe things not partible.

CHAP. VI.

ON

PARTIBLE PROPERTY.

SECT. I.—*On the Partible Residue after the Payment of Joint Debts.*

AFTER excepting this, *which has been mentioned in the preceding chapter, all other property is partible.*

CCCLXVIII.

CÁTYÁYANA :—On a partition by coheirs, all the wealth left by their father, or by his father, and what they themselves have acquired *by their joint efforts*, shall be divided among them.

Wealth left by their paternal grandfather; property which has descended from that ancestor through the father; or, in certain instances, passing by him, *and devolving immediately on the son*: this intends generally all wealth which has descended from ancestors. “Paternal estate;” gained by the father himself. “What they themselves have acquired:” self is here employed in the plural sense; consequently, what is gained by the coheirs, through agriculture or the like, *is here meant*. So MENU, in a text formerly cited (LXXIII), directs, that there shall be an equal division without any allotment in right of primogeniture. From the mention of “unlearned” in this place (LXXIII), some argue, that if any one of them be learned, a greater portion shall

be allotted to him on account of his good qualities. But that is not right ; for, when a greater allotment, in right of seniority by birth, is disapproved, how should a larger portion be allotted in right of pre-eminent learning? This *seeming difficulty* must therefore be thus reconciled, in conformity with the opinions of CHÁNDÉSWARA and the rest : if one of five brothers acquire wealth by agriculture and the like, another by commerce or similar means, some by learning, valour, and so forth, with supplies from the joint estate ; in that case, the learned coheirs share the wealth which is gained by agriculture or the like, but the illiterate parceners have no share of what is technically called the acquisition of science : therefore is it said, “ being unlearned ” (LXXIII). Accordingly it is observed by CHANDÉSWARA, on the text of GÓTAMA, that “ unlearned ” signifies destitute of that science which renders wealth several and appropriate. But that text of GÓTAMA may be *explained as* intended to forbid the allotment in right of primogeniture. At present, if all the coheirs, being destitute of learning, acquire wealth, jointly or severally, by agriculture or the like, since all would be entitled as acquirers to double allotments, equal partition is therefore proper, and the greater or less *share in the* acquisition should not be investigated : as is remarked by CHANDESWARA, ‘ if all the
 ‘ brothers, being unlearned, acquire wealth by agriculture or
 ‘ similar means, then an equal partition shall be made of that pro-
 ‘ perty which was not the wealth of their father ; much being
 ‘ accumulated by one, it shall not be set apart in the form of a
 ‘ deducted allotment, or the like.’ The same should be understood in respect of *all* undivided coheirs, even though joint property have not been used.

But, according to the opinion of JÍMÚTAVÁHANA and the rest, coheirs not inferior in learning have a right to participate in wealth which has been acquired by science without the use of the joint property, and which is technically named the acquisition of a scholar : not coheirs inferior in learning, or *absolutely* illiterate ; in contemplation of this it is said, “ being unlearned ” (LXXIII).

“ Or any thing which they themselves have acquired,” excepting that for which there is a cause of severalty. The text (CCCLXVIII) must be so supplied, according to the *Retnâcara*.

Consequently, the virtual sense of the term "self-acquired," is, "gained by any one of the parceners."

CCCLXIX.

CÁTYÁYANA :—After delivering what is due as a friendly gift *promised by the father*, let the remainder be divided among the heirs : it shall be received in order by the sons, *or other descendants of the last owner*, as far as the fourth degree.

Such things as have been promised by the father in donation to any person are amicable presents: after delivering those *promised* gifts, the remainder shall be divided. In answer to the question, who shall receive shares, the brothers, or any other persons? the legislator adds, "*the heritage shall be received in order by lineal descendants as far as the fourth degree*," conformably with the text of MENU, propounded under the head of Inheritance.

CCCLXX.

MENU :—To three *ancestors* must water be given at their obsequies ; for three (*the father, his father, and the paternal great grandfather*) is the funeral cake ordained :—the fourth *in descent* is the giver of oblations to them *and their heirs, if they die without nearer descendants* ; but the fifth has no concern *with the gift of the funeral cake*.

To three, the father, the paternal grandfather, and paternal great-grandfather, water and cakes must be offered: it being thence deduced, that he who confers a benefit on the late owner shall take his heritage, it is suggested, that the fourth in descent from him, namely the son's grandson, is entitled to a share. Such is the opinion delivered in the *Retnâcara*. Thus the meaning is, that the wealth to be divided *shall be received, &c.* But HELÂYUDHA says, what was promised *shall be received by descendants*

ants of the donee down to the fourth in descent: it may be taken by any one of the lineal descendants of him to whom it was promised, down to the great-grandson: if the donee be dead, it shall be received by his son; or, in case of his death, by the son's son; or, if *all* these be deceased, by the son of the grandson. This also is founded on the text of MENU (CCCLXX).

It should be here noticed, that the thing promised, being given to any one descendant of him to whom the promise was made, shall be taken exclusively by that *one descendant*: it shall not be shared by his brother or other coheir, for it had not become the property of him to whom the promise was made; and a right is only vested in the person on whom a gift is *actually* bestowed. But if it were already given, though not delivered, then indeed, according to JIMÚTAVÁHANA, property was vested in the donee: it shall therefore be divided among his heirs. But, according to the opinion of those who affirm property to be vested by acceptance, the gift intended for the father in the mean time becoming similar to unclaimed effects, ought to be accepted indifferently by all the sons; and the single acceptance of one is therefore improper.

We resume the subject. After paying what has been promised by the father as a present (that is, what has been given by him but not delivered), and a debt contracted by him, the remainder shall be divided, as declared by NÁREDA (CXI): "To the claimants on the heritage of the father;" to those to whom gift or payment has been promised by him (CXI): so authors *expound the term*. What has been given away by the father, though not delivered, is no longer his property; partition could not therefore be supposed. But the author of the *Pracāsa* reads *pitṛī dānēbhyah*, instead of *pitṛī dāyēbhyah*: still the sense is the same, as has been remarked by CHANDESWARA.

"The debts of the father" (CXI); this is a mere instance of a general meaning: one contracted by a paternal uncle, or other person, for the support of the family, must be likewise discharged.

CCCLXXI.

CÁTYÁYANA:—A debt contracted by a brother, a
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paternal uncle, or a mother, for the *support of the family*, must be fully discharged by the coheirs when partition is made :

2. That debt must be paid to the creditor ; but he shall not exact payment when the demand is contested, unless it be proved by evidence.

If the father affirmed “ the debt which has been contracted is not payable by me ; ” then, after his death, that debt shall only be paid by his son when it is proved by evidence, otherwise it shall not be paid. Such is the meaning of *the text* (CCCLXXI), as explained in the *Retnācara* ; but if the debt be uncontested, it must be paid without evidence adduced.

A debt contracted by an undivided coheir even without *the assent of parceners*, or after partition with *their assent*, must be paid (Book I, v. CLXXXI). The precept is general, including brother's sons and the rest.

CCCLXXII.

The debt of his father, his own debt incurred on account of those of his father, and one contracted by a parcener himself *for the support of the family*, must be discharged *by him* jointly with his kinsmen when partition is made.

The debt of his father, though not contracted for the support of the family, must be paid, as mentioned in the *first book*, On Loans (Book I, Chap. V). One incurred by a parcener himself on account of sums due by his father, that is, for the payment of his father's debts, must be discharged by all the brethren when partition is made. One contracted by the parcener himself for the support of the family, must be paid by all the brethren at the time of partition. Such is the interpretation, not inconsistent with the gloss of CHANDÉSWARA.

CCCLXXIII.

CCCLXXIII.

What has been given away for the religious purposes of one individual, a friendly gift, and a loan made on his sole account, shall, if discovered, become part of his allotment; for the patrimony cannot be aliened by one parcener on his separate account.

What is given away for religious purposes, that is, solely for his own religious purposes, he shall share at the time of partition; *in other words*, his share shall be made good, including in it the sum given away. So likewise in the case of a friendly gift. "And a loan made on his sole account:" for example, during coparcenary, a stranger asked a loan of one brother: he replied, "I will give it;" but the rest of the brethren forbade it, and he said, "this loan shall remain on my sole account:" in this and similar instances, a sum lent on the sole account of one parcener he shall share; *in other words*, that sum shall be included in the full share allotted to him. The reason is subjoined; "*for the patrimony cannot be aliened:*" a separate gift cannot be made out of the patrimony or joint-estate, nor an act annulling property be done, The Calpateru.

"If discovered;" being ascertained: this is an epithet expressing a matter of course*; for there could be no dispute among brothers concerning a matter which was not detected. Consequently, if it be concealed, there is simply a moral offence. Or joint property having been expended for a separate religious purpose, by one who usually disburfes money for such joint uses; but *the circumstance* being accidentally forgotten, the unintentional act is no offence, any more than *the seizure of* another's property by mistake: to denote this, it is said, "if discovered." "A loan made" is a mere instance of a general meaning; for the law is the same in the case of sale, purchase, hypothecation, or the like.

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* *Svarūpasat*: deemed almost superfluous, since it must, even though not expressed, be inferred from the "nature" of the thing spoken of: a truism, if I may use this word. T.

“For religious purposes,” is also a mere illustration: for the same must be understood of wealth aliened, for gaming, for harlots, or the like.

But the author of the *Pracāśa* and the *Pārijāta* thus expound the text: a debt contracted by one parcener for separate religious purposes, or a sum borrowed and given away through affection, or for private uses, he shall divide: borrowing money during coparcenary, a separate religious purpose has been effected; or the sum has been given away to any person through affection; or enjoyment, such as the wearing of delicate apparel or the like, has been therewith obtained: such debts he shall “divide;” that is, he shall remove them from any connexion with the rest of the brethren, the term being here used as in the example, “divide the leaf from the tree:” in a word, such a debt shall not be paid by the rest of the brethren; gift or payment of the debt shall not be made out of the patrimony.

CHANDÉSWARA, quoting the several opinions, adds; ‘in fact all this is determinately meant; it is proper to explain the text as bearing all these senses.’ It must be inferred, that, like an ambiguous poem, two senses are intended by the Sage; or one is expressed, and the other is deduced from parity of reasoning.

“For enjoyment;” if one parcener expend joint property for his pleasures, and permit not another brother to do so, his debt shall not be discharged, and his expenditure shall be included in his allotment; but if all expend joint-property for religious purposes, or for sensual gratifications, then, all having enjoyed the property, there shall be no inquiry touching the greater or less expenditure, any more than in the case of acquisition made by all the parceners. But if a dishonest coheir dissipate wealth at his pleasure for his own enjoyments or the like, and, with a view to his future justification, persuade another brother to expend a trifling sum; then, the fraudulent intent being proved, it is directed that the amount which has been dissipated by the dishonest coheir shall be charged against his share; for with him, in effect, originated the use made of the joint property by the other brother.

If one brother, going from place to place, and earning wealth, support the family; then his expenditure of joint property for the wearing of delicate apparel and other enjoyments, is a disbursement on the part of all the coheirs; and a debt contracted by him for

for that purpose must be paid by all *of them* : on the interpretation of the *Calpateru*, is not this inconsistent with the text of CĀRYĀ-YANA (CCCLXXVII 4) ; for there is no distinction specified in regard to expenditure for *purposes* of duty, from an impulse of affection or the like ? Consider that text as relating to indispensable duties, such as the investiture of a son with the mark of his class, or the like, as well as necessary consumption.

If one parcener expend joint property for his own religious purposes, the merit is *supposed to be* exclusively his own ; does not this contradict the speech of VYĀSA to YUDHISHT'HIRA in the MAHĀBHĀRATA, " If thou sacrifice, O king ! all will have sacrificed ; " for it is there expressed that BHĪMA and the rest also partake of the religious merit ? A rite performed with a view to the consequent merit of all the brethren, fulfils the duty of all ; one performed with a view to the obligations of one brother, fulfils his duty only : there is consequently no discrepance. By parity of reasoning, should it not be the same in the case of sale ? That is admissible.

If any one parcener, expending the joint property, acquire any wealth for himself, would it not be exclusively his own ? It should not be answered, that is admissible ; but the text, which allots a double share *only* to the acquirer, relates to the case where a parcener expending joint property acquires wealth intended for all the coheirs. Were it so, fraud would not be obviated : for a dishonest parcener, occupied in acquiring wealth by the expenditure of joint property, would affirm, when he afterwards finds a gain, " this was earned by me on my own sole account ; " if he perceive a loss, he would say, " it was done for all *the coheirs* . "

As for what is argued, that this law relates only to wealth given away for religious purposes and the like, since that only is mentioned in the text (CCCLXIII), but, in other cases, whatever is acquired by the expenditure of joint property, is common *to the parceners* ; that inference is questionable : for it is irregular to establish various rules, where the reason of the law is the same : and VRĪHASPATI says, " if no decision were made according to the reason of the law, there might be a failure of justice. "

On this some remark, that religious merit, wealth, or any other acquisition made by the expenditure of joint property, is
common

common to all the parceners ; as appears from the text of *MENÜ* (XVIII), and from the speech cited from the *Mahābhārata*, and from the texts of *VASISHT'HA* and others (CCCLVI, &c). If the rest oppose one who expends joint property to accomplish a joint business, and he persist in the disbursement, saying, "the expence and profit are mine ;" whatever is then acquired by him, whether religious merit, wealth, or the like, belongs exclusively to him ; otherwise it is common to the parceners. It should not be objected, that still there is a contradiction to reason : thus, if he privately, or unopposed, gain religious merit or the like for himself, how can they have a share, since the fruit arising from the act is not produced *by them who were* neither intended *by the actor* nor *themselves* agents in it ? Though neither intended, nor *himself* the actor, the owner of the wealth which has been employed is entitled to the produce. Any one carrying on traffick with the property of another, unauthorized by him, cannot claim the gain ; if he might, the holder of a deposit, having obtained interest *on it by lending* the thing which was intrusted to him, could claim that interest as his own. In the case above mentioned, since the acquirer is an undivided coheir, and the wealth common to the parceners, there is no theft ; and therefore no fine shall be imposed ; *an allotment*, such as a double share or the like, is the hire of his labour. These lawyers thus reconcile the *seeming* contradictions.

The practice relative to separate property hardly occurs in the case of wealth gained through the use of the common stock : but if the acquirer were opposed by the rest, his acquisition is separate property. As for the argument, that, in a case of religious duty, the effect corresponds with the design : thus, rites performed by an opulent son for the sake of his deceased father, produce benefit to the father alone ; but in civil affairs it is not so, since there is no proof of this point : hence that act of religion which a man performs, though forbidden by his coheirs, is exclusively his own ; but a *pecuniary* acquisition made for himself belongs to all the owners of the wealth which is employed : that argument is disputable, for a debt is also mentioned in this text.

Others, connecting the words "on his own sole account," with the three terms of the text (CCCLXXIII), thus expound it ; charges for a coheir's own use must be defrayed out of the patrimony. Thus, there is no inconsistency with the text above-noticed (CCCLXXVII 4). What is given for *separate* religious purposes,

purposes, and what is bestowed through affection, are considered as given for his own sake. In like manner, according to the opinion of the author of the *Pracāśa*, if one brother use the patrimony, and another, happening to be in another place, contract a debt for his subsistence, that ought to be paid by him who enjoys the common estate. It is proper to connect the terms "given for religious purposes," and "bestowed through friendship," with the words "on his sole account." Such being the case, must not a debt incurred for his own enjoyments be paid out of the property which is held in common with another brother? It is not consistent with the law, that money borrowed by one *parcener*, of his own accord, for any other purpose but for the support of the family, should be repaid out of the joint property. It should not be objected as a consequence, that a debt incurred by him for his subsistence or the like would not be discharged. The payment of such debts is established by the reason of the law. Does not the text, as interpreted by the author of the *Pracāśa*, consequently become unmeaning? No; for the sense of former texts is confirmed by this. But those *lawyers* hold, that the precept was necessary; for it moreover propounds the severalty of religious merit and the like gained by *the use of* joint property.

SECT. II.—On *Disputed Partition*.

ART. I.—On the *Distribution of Effects concealed*.

CCCLXXIV.

CĀTYĀYANA:—A house, arable land, or quadrupeds, discovered *after partition to have been the property of the deceased*, must be divided: if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law.

2. Thus MENU declared, that household utensils,
beasts

beasts of burden, or milch cattle, ornaments, and slaves, must be divided, when discovered *among the heirs*; and that, if effects are *suspected to be* hidden, a discovery must be obtained by the *cōsha*, or an ordeal by drinking water in which an idol has been washed.

“Ordeal;” a solemn trial *by water*: this he explains *in the second verse*. “Household utensils;” the mortar and the rest. “Slaves;” bondmen and other servants. The rest is well known, and familiar.

CHANDÉSWARA.

When some cause is shown for suspecting that effects are concealed, then only shall ordeal be performed. For example; the income is great, and expence small; but he who superintends the receipts and disbursements does not satisfactorily account for them: again; when the brethren, at the time of partition, claim a chattel previously seen, and the brother who manages *the household affairs* alleges, but does not prove, its consumption: again; the manager has acknowledged ten pieces of money, and afterward it is by some means discovered that he had eleven *such* pieces in his hands: in these and similar cases ordeal must be performed. Else, since doubts may be entertained in every instance, partition could scarcely be made without it. To this opinion RAGHUNANDANA assents.

“*Cōsha* ;” a trial by touching *or drinking* water in which *the image of* a ferocious deity has *been* bathed. The form of this *trial* must be sought in treatises on the subject of Ordeal. Should more effects be discovered by this or other means, they shall only be divided: he who secreted them shall not be deprived of his share, nor shall he be amerced; for he is not guilty of theft by secreting those effects. This relates to the case when suspicion arises at the time of partition; if it arise subsequently, MENU directs *the proceeding*:

CCCLXXV.

MENU:—When all the debts and wealth have been justly distributed according to law, any property that

that may afterwards be discovered shall be subject to a similar distribution.

“Afterwards discovered;” subsequently known from popular proof: ascertained, or justly suspected. Ordeal is not directed on *mere* suspicion entertained in the mind of one brother after partition, without a probability of embezzlement, arising from *circumstantial* evidence. However, should ordeal happen to be directed *without sufficient grounds*, but the suspected person be thereupon convicted of having secreted effects, then also an equal partition shall be made. Does not this contradict the terms of the text, “any property that may be afterwards discovered,” (*paśchāt drīśyaté*)? No; for the verb *drīś* bears the same sense of “know” as well as “see.” Then ordeal would be directed on a mere suspicion entertained in the mind of *one coheir*? No; for it can only be directed with propriety, when the king, or the umpire, after hearing the allegations of the plaintiff and defendant, sees ground for doubt. But in this case, the plaintiff being unable to set forth sufficient cause, the judge or arbitrator entertains no suspicion *against the defendant*; and ordeal is not therefore enjoined. Such is the principle of the law.

“According to law” (CCCLXXV). If the distribution were illegal, a second partition must be made, even though concealment be not alleged; but if the distribution had been made according to law, no second partition shall be granted unless effects were secreted.

CCCLXXVI.

YÁJNYAWALCYA:—When effects, secreted by one parcener from the other, are discovered after partition, the coheirs shall again distribute those effects in equal shares: this is a settled law.

Partition being suggested as a matter of course, it is intimated, by the enunciation of this text, that the crime of theft is not committed by concealing effects held in coparcenary. So HELÁYUDHA, VISWARÚPA, CHANDÉSWARA, JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest.

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“ In equal shares :” this is not intended to deny the right of primogeniture, but to remove the doubt whether he (*the concealer*) shall have a less share, because he secreted the effects : else, an elder brother, though blameless, would lose his greater portion when a younger brother has embezzled any part of the property, which would be contrary to reason ; and the sons of a *Bráhmaṇi*, and of a *Ushatriyá* wife, would have equal shares. This very exposition is delivered by JÍMÚTAVÁHANA. “ Equal ” here intends such share as would have been given, had not effects been secreted.

CCCLXXVII.

CÁTYÁYANA : — Recovering what has been embezzled by any one of *the coheirs*, let sons, after the death of the father, distribute it equally among the brethren.

2. If the parceners have secreted part of the assets from each other, or if any mistake has been made in the partition, on a subsequent discovery there must be an equal division of what is restored : this is a law of BHRĪGU.
3. What is *singly* acquired by one of *the brethren* after partition, belongs exclusively to him ; but let him again bring into partition what is recovered after it had been stolen or lost, and that which is above mentioned.
4. Effects which a kinsman has concealed, let not a coheir *at first* use violence to make him restore, but let him begin with *friendly expostulations* ; nor let a coheir be obliged to make good what he had expended *before partition for the necessary support of his family*.

“ Recovering ;” obtaining : for there scarcely is a difference between

between the sense of go and obtain ; the one is included in the other *.

“ Secreted from each other ;” if all the brothers have severally secreted something, and the whole be discovered after partition, this is propounded, to remove the doubt whether that which each has concealed shall belong exclusively to him, without discriminating the greater or less value, in like manner as in the case of acquisition *severally made by all the coheirs*. “ Or if any mistake has been made ;” for example, if more have been given to one *than to another*, by mistake, or *with intention* to defraud *that other coheir*, then, should the excess be subsequently ascertained, lots shall again be cast ; but not upon the simple allegation of an unfair distribution. Thus the text of MENU (CCLII 6) must be considered as relating to partition made according to law. The following text of VRĪHASPATI also relates to the same subject :

CCCLXXVIII.

VRĪHASPATI :—Whatever share is enjoyed by each, let not that be contested ; if he subsequently dispute a distribution, which was made with his own consent,

2. He shall be compelled by the king to abide by his share, or be amerced if he persist in contention.

“ A distribution made with his own consent ;” but if the plaintiff said, even at the time of partition, “ I will not accept this allotment,” but was compelled to receive it by a partial and powerful umpire, he may obtain a second partition, on setting forth the whole circumstances before the king, with sufficient proof, and on showing the defect of the distribution. This is intimated by the text, and has been expressly declared by CĀTYĀYANA (CCCLXXVII 2). But if he then assented to the distribution, whether ill or well made, and now allege that an unfair division took place, he shall be compelled by the king to abide by his share ; and if he persist in contempt of the king’s command,

* All verbs which signify ‘ to go,’ also signify ‘ to obtain.’ T.

command, and cannot show the disparity *to have been* unknown at the time of partition, he shall be amerced, that is, fined by the king. If he then assented to an unequal distribution, knowing the disparity, it is unreasonable that the inequality should be now investigated. RAGHUNANDANA holds, that the same sense may be deduced from the single expression “made with his own consent.” His acquiescence must be here understood to have been voluntary, not proceeding from the menaces of the umpire; for a contract, to which a man has consented with his lips, under the impression of fear or the like, is declared null (Book II, Chap. IV, v. LVIII). It should not be objected, that, in the case of compulsion, there is no assent. Without will, or assent, there could be no determination to action.

“On a subsequent discovery, there must be an equal division of what is restored:” hence it appears, that a distribution of that only shall be made; what had been already distributed shall not be again divided. “An equal partition” is mentioned to remove the doubt, whether no share, or a less allotment, shall be given *to the concealer*, because he had secreted the effects.

RAGHUNANDANA.
To this some lawyers object, that CĀTYĀYANA has said, “on a subsequent discovery, there shall be an equal partition of what is restored,” because there could be no second partition, if the effects, mutually secreted, were not restored; it is not deduced from the terms of the text, that so much only *as is refunded* shall be divided. It should not be answered, that this meaning is nevertheless deduced from the expression “*restored* on a subsequent discovery.” This term is here inserted, to remove the doubt whether coheirs shall divide what they had secreted from each other, if discovered at the time of partition; but not, if subsequently detected.

If this *objection be proposed*, the answer is, No; for a second partition of what has been already distributed is not inferred, because a division of what may be subsequently discovered is ordained: MENU and others do forbid *a second partition*; and a disquisition on words, when the consequence would be unjust, is nothing to the purpose.

“What is obtained by a divided brother, &c.” (CCCLXXVII₃); what is acquired after partition by the use of *his* separate share

share of the patrimony, belongs exclusively to him *who acquired it*. This declares *what was* a matter of course: or it means, that any thing which is gained after partition by the use of common property remaining to be divided, shall be taken by him alone *who acquired it*; one share each shall not be allotted to the other coheirs, and two to the acquirer: however, something must be given by him as a recompense for the use of the property; and that shall be regulated in proportion to the magnitude of the sum and the labour of the man, as in the case of wealth acquired by one among associated traders, upon the joint stock.

“Singly by one of the brethren after partition” (CCCLXXVII 3); connecting these terms, ancient authors infer, that, if wealth be acquired by coheirs before partition, even without supplies from the common estate, those who contribute not to the acquisition shall nevertheless receive shares. But that has been already impugned by JĪMŪTAVAHANA, because VYĀSA (CX) has ordained a double share for the acquirer in the case where the joint property has been used, but no legislator has propounded a special allotment for the case where it has not been employed. However, what is delivered to one, but intended for all, must be equally shared by them, because all are donees; but if the gift were obtained by labour, it shall be unequally divided. Such is the principle of the law.

“Stolen;” (CCCLXXVII 3) taken away by thieves. “Lost;” missing, being covered with earth or the like, or having been taken by a stranger while it was in a situation of a waif. “That which is above mentioned;” namely, what has been embezzled by one brother, or secreted by the coheirs from each other, or ill distributed. These things shall be again brought into partition; these only shall be again divided, not any other things: this is a precept which recapitulates the preceding rule. The second partition shall be made *proportionately* by a reference to other paternal wealth already distributed.

“Effects which a kinsman has concealed” (CCCLXXVII); joint property embezzled by him: this term is here secondary, for the case does not fall within the definition. Theft is the taking possession of a thing which appertains solely to another; but these effects do not solely belong to another person. He shall

be made to restore them by mild expostulation and similar means, not by violence. RAGHUNANDANA.

It may be asked, if he restore them not after friendly expostulation or the like, may the coheir use compulsion or not? It should not be argued, from the words of the legislator, "let not a coheir use violence to make him restore," that it shall not *even then* be used. It would contradict reason, that punishment should be denounced against him who formerly assented to the distribution, but now, thinking his allotment unequitable, desires a second partition, but does not seek to obtain the common property by fraud or the like, while no punishment is denounced against this man *who defrauds his coheirs*. It is said, still the fine is, in this case also, imposed for disobedience to the king's commands, or for other instances of contumacy, not for the simple act of concealment. Punishment is inflicted, in the present case, as on a thief, for the simple act of taking *the effects*.

"Let not a coheir use violence, but artifice or the like, to make him restore *effects concealed*." The *Retnâcara*.

"Nor let a coheir be obliged to make good what he had expended;" what he has consumed more than his coheirs, before partition, he shall not be compelled to make good.

JÍMÚTAVÁHANA, RAGHUNANDANA, and others.

But, in fact, since this is mentioned under the title of *Effects concealed*, it should be considered as relating to embezzlement. Consequently, this text denies that others shall receive shares of the value of what he has consumed out of the land, or other property, which he embezzled. Hence he shall not be compelled to make good the food and apparel obtained from the undivided property of separated kinsmen. It should not be objected, that, were it so, the word "coheir," or undivided kinsman (CCCLXXVII 4) would be unmeaning. They are coparceners and united kinsmen in respect of their shares in that property *which is yet undivided*; but if he consume the several property of another, he must necessarily pay the value of what he has wasted. Nor should it be objected, that the usufruct of undivided wealth appertaining to separated coheirs, but secreted by one parcener, must be made good, because *the reverse* is not expressly said by any author, and the literal sense of the text does not show it. Since the use of joint property, appertaining to
disunited

disunited coheirs, is no more a theft than the employment of wealth belonging to coparceners, compensation for what is destroyed by use alone would not be proper, and such is the object of inserting that precept under the title of Effects concealed. This inference we hold reasonable.

CCCLXXIX.

VRIHASPATI:—If the loan or bailment of joint property be fraudulently concealed, let the king use means to detect the cheat and reclaim the defrauder, but not compel him by violence to restore the property:

2. Those crafty and covetous men who live by deception, and detain the property of others, should be reclaimed by mild methods, by the loss of their own wealth, or by artifice.

‘ If those debts and deposits, which are *claims* common to the parceners, be concealed ;’ such is the meaning. The construction is not, ‘ if joint property be secreted, if a debt be concealed, &c. :’ for it is declared in the *first* book, On Loans, that force may be used to compel payment, if a *just* debt be not acknowledged by the debtor. ‘ If concealment of a loan or bailment be made by fraud ;’ such is the literal construction, so supplying the text.

“ Let the king use means to detect the cheat and reclaim the defrauder ;” using means to defeat the fraud of the concealer, let the king compel restoration, but not by violent methods. For example, a coheir, lending money to any person, conceals it from his brethren, and they have made partition, but, discovering the fraud by some circumstances, complain before the king ; let not the king seize him and extort a confession, but proceed by a circumstantial inquiry. The form of proceeding may be this : let the king ask him, “ Is DÉVADATTA thy debtor or not ?” He replies, “ DÉVADATTA is not indebted to me, but to my wife’s brother ;” then let the king ask, “ in what sum, and when lent ?” and cause his answer to be noted : afterward let the

king call the absent brother-in-law, and examine him on the sum borrowed by DÉVADATTA, and on the date of the loan, and various other points. If the answers correspond, let him follow another mode of investigation; but if they disagree, then, having detected the fraud, consisting in a false affirmation, let him compel restoration by admonition or other mild methods, or by artifice.

Or the sense may be, 'if the loan or bailment of joint property be concealed, let the king compel restoration, either by artifice, or by adopting a process which imposes on the concealer a loss of his own wealth.' The disjunctive particle must be supplied in the text. "Loss of his own wealth" may be thus exemplified; let the king attach his land, or other property, until he make satisfaction.

"Deceivers," or men who live by delusion, detain the wealth of others; such is the meaning of the text (CCCLXXIX 2). They are crafty and covetous; for, without avarice and dishonesty, they would not fraudulently seize the property of another. They should be reclaimed by mild methods, or by the loss sustained by themselves, or by artifice.

The precepts concerning partition among brothers should be also observed, with due attention to circumstances, in partition made by a father. For instance, a full share must be solely allotted to the son lawfully begotten, and either the shares ordained in the *Brahma purāna*, or a third part, shall be given to the rest; but, on failure of one lawfully begotten, a full share must be allotted to them also, in the order of succession. Of wealth not *universally* partible, a distribution shall be either made, or refused, in the mode above explained: and in like manner shall effects concealed *be brought into partition*. Again, if sons have themselves made an acquisition during the life of the father, he shall have half, if the patrimony were used, and two shares, according to JIMÚTAVÁHANA, if the common stock have not been employed: this has been already explained at large. But if the wealth of the brethren have been used, the father shall have two shares, the acquirer two, and the parceners one each, according to RAGHUNANDANA. That the acquirer shall have two shares, and the rest one each, if joint property were employed, is deduced from the texts of VYÁSA and the rest; but whence is a
similar

similar allotment inferred, if the several property of the brothers have been used? The commentator himself has already said, that equal partition is proper if wealth be acquired by the labour of a horse belonging to one, and by the personal exertions of another. To this some lawyers reply, the remark supposes the case of an acquisition made on wealth common to the brethren and acquirer; but, in the instance of supplies received out of several property, the father shall have two shares, under the authority of the text, and the gainer and owner a share a-piece; if the acquirers be numerous, they shall take and divide a single share: so likewise if the wealth which was employed *severally* belonged to many persons; for a single benefit arose from the use of all the sums. It should not be argued, that, if wealth be acquired by two brothers with supplies from the several * property of the rest, they shall take and divide two shares; they shall not receive two a-piece: consequently, if an acquisition be made by a single co-heir, unaided by an associate, he has two shares but in this case he has in reality one only, which would be a discouragement to *the making of* acquisitions with the aid of a companion. There may be encouragement from the expectation of gaining greater wealth by the exertions of two persons than of one. Two shares being ordained for the father, in the case of an acquisition of wealth common to the brethren, the same rule should be also observed, *with the exceptions maintained according to the different opinions of commentators*, in the case of wealth acquired by science. If the father maintain the family of his son studying science, what shall be *the distribution*? Since he is of course entitled to a double portion, there is no difference if he maintain *the family of the student*. It should not be argued, that a *still* greater share ought to be allotted. The father is bound to support the family of his son: and it is not true that those of whom the master is entitled to support from a certain person, are not entitled to a maintenance from the same person. If it be inferred, from the literal sense of the following text of MENU, that a father is not absolutely bound to maintain the family of his son, then the word

D D 3

“ brother,”

* So the manuscript; but the sense manifestly points to the reverse: in many such instances, I have, with the advice of *Pandits*, corrected the obvious errors of the transcript, but shall not take that freedom in the present instance. T.

“ brother,” in a text above cited (CCCLVII), must be taken in a rigid sense.

MENU declared, that a mother and a father in their old age, a virtuous wife, and an infant son, must be maintained, even though doing a hundred times that which ought not to be done *.

It should not be objected, that a paternal uncle, a brother's son, and the rest, would receive no share of the acquisition of science, in the sole right of having maintained the family of a learned coheir. The rights of a brother must be ascribed even to a paternal uncle, a brother's son, and the rest, because they take *shares* from analogy to brothers. It should be here remarked, that, if the coheir, who went to study a science, maintain the family of him who supports his household, (that family happening to reside at the same place *where he studies*,) no share of the acquisition of science shall be given to him who maintains the family of the learned brother ; for, in effect, there is an interchange of maintenance. Such is the inference of common sense. Again ; if *one receive alms from* some man religiously bountiful, *and* support the families both of the student and of another parcener, he is not considered as one who maintains *the family of a learned coheir* ; and therefore he shall not receive a share of wealth acquired by science. But if one brother only share the acceptance, then the maintenance given by him is deemed in law support *of the family of a learned coheir*, since he partakes of *any* sin arising from that acceptance : it is therefore proper that he should receive a share *of the acquisition*. All this relates to wealth gained before partition ; but if it be acquired after a distribution, even a father shall have no share of it.

ART.

* The text is quoted in Chapter VIII. as inculcating the necessity of maintaining these relatives, even by the commission of offences : I have endeavoured to preserve the ambiguity of the original. T.

ART. II.—*On Dubious Partition.*

CCCLXXX.

NÁREDĀ:—When coheirs have made a partition, the acts of giving and receiving cattle, grain, houses, land, household establishments, dressing victuals, religious duties, income and expences, are to be considered as separate, and as proofs of a partition*.

“Dressing victuals;” for the service of guests and the like, and for the food of the family. “Religious duties;” the aggregate of constant and occasional acts of religion. “Income;” acquisition. “Expences;” the gift of handfuls of grain in charity and the like. “When coheirs have made a partition:” this being mentioned without limitation, it is suggested that income is separate when partition has been made with the father; and this text decides the case when the fact of the distribution is questioned: hence likewise it does not relate solely to brothers; for “father and son” are mentioned in a text of YĀJNYA-WALCYA as intended to determine the case of dubious partition. These are *admitted as* proofs of a *prior* distribution, on failure of a writing or other convincing evidence; for NÁREDĀ mentions verbal proof of separate acts, after written evidence of a partition; and in every case a written document prevails *over circumstantial proof*.

CCCLXXXI.

NÁREDĀ:—Should a doubt arise whether a legal partition have been made among heirs, it must be cleared by the testimony of their kinsmen *in the first place*; then by written evidence of a partition,

D D 4

if

* See V. ccclxxxvii. 2.

if there be any; if not, by verbal proof of their separate acts.

Should a doubt arise concerning that in which partition consists; should it become a question whether a distribution have or have not been made among heirs. The *Retnâcara*.

Not whether the partition be legal *or illegal*, just or unjust; for this cannot be determined by evidence of separate acts. It should not be affirmed, that the last terms of the text signify 'placing in the house of another person the effects which are supposed to have been unfairly distributed, proceed to *investigate* the business.' NÂREDA himself makes evident, (CCCLXXX,) the meaning of "separate acts;" but verbal or written evidence may be brought to prove them.

VRĪHASPATI explains the nature of a written record of partition.

CCCLXXXII.

VRĪHASPATI:—That record of partition which brothers, *or other coheirs*, execute after making a just division by mutual consent, is called the written memorial of the distribution.

The term "brothers" is an instance of a general meaning; it must *also* be understood of a father when partition is made by him, and of brother's sons and the rest. "After making a just division:" this is a matter of course; for, though a writing be also executed when an unfair partition is made, that instrument is in fact unavailing. "By mutual consent:" this intends any one of the parceners; for the consent of all is not requisite in *undertaking* a distribution. That record of partition, or writing declaratory thereof which they execute, is called the written memorial of a distribution. Since the letters traced on the leaf express partition, the leaf itself, mediately by its contents, shows a distribution; or it does so, because that and the writing are considered as inseparable.

Again; since VRĪHASPATI calls the leaf a written memorial of the distribution, it is proper to write, *at the beginning of the instrument,*

instrument, “ this written record of partition ;” and since it is called an instrument declaratory of a distribution, such terms should be inserted as denote partition. For example, it may be written, “ I have received from you a sum so and so, and yielded “ to you sums so and so, as a division of the whole patrimony, to “ which we have assented.” The instrument should be rendered firm, by adding “ whatever shall be asserted *to the contrary* is false.” The first part is sufficient to show partition, but it becomes authentic evidence by confirmation. In this document the several chattels ought to be inserted at large, by name, as they are allotted to each of the coheirs ; else proof of concealment in the partition would fail. There is no objection, if the inventory be written on the back of the instrument ; but the total sum should be noted in figures, lest suspicion arise that effects, then concealed, have been subsequently inserted. But if all the effects be enumerated in the body of the instrument, it is best. The effects should be separately written under the name of each brother, for it is hardly possible to write at once the detail of of what is received by each. The use of this is to ascertain at a future time the fairness or unfairness of the distribution. In like manner, the additional portion which is received in right of seniority or the like, should be inserted under the separate head of each *allotment*. This is the principal form ; but, instead of it, the party may write simply, “ a just distribution, made with my own consent, has been accepted by me.”

The text of YÁJNYAWALCYA, expressing generally “ whatever contract have been concluded ” (Book I, V. xvi), the same form should be also observed in the present instance, since there is occasion for it. The precept being delivered under the title of Loans, the word “ lender or owner ” is used : in fact, that term denotes him whom the instrument concerns ; consequently, as the lender is the person contemplated in the written contract of loan, so, in the present case also, he who is contemplated in the writing must be described by the same term ; and thus the names of those brothers, to whom the document is addressed, should be first inserted. Since they are in rank equal to each other, a term expressive of praise is not necessary ; but nothing prevents the insertion of one allusive to memory. Again ; their designation by the name of their father and so forth ought to be added, be-
cause

cause it is directed by YÁJNYAWALCYA, and because it prevents a doubt concerning other sets of brethren bearing the same names; else, one of so many brothers bearing the same appellations might produce that very document, and be casually enabled to affirm that partition had been made between them, although it had not taken place. Again; the date of the year, month, half month, and day, ought to be inserted: and thus, what is gained subsequently to that date, is shown to be the acquisition of a separated coheir; and the falsity of such an instrument, forged by one capable of counterfeiting every handwriting, may be detected by proof of acts not separately done at a time posterior to the day and month inserted in that instrument. The writer should subscribe his name at the foot of the document, and subjoin the appellation of his father and other designation, as directed by the text of YÁJNYAWALCYA (Book I, V. xviii). On the foregoing reasoning, the term debtor here signifies the person who himself subscribes the instrument, or *who executes it* through the intervention of a representative. The witnesses must sign their names, after writing the appellations of their father and other designations: the scribe should also subscribe his name. Again; a document in the handwriting of the party is sufficient evidence without witnesses; but, in fact, their attestation ought to be taken to such an instrument. The difference and the correspondence of this, and of a written contract of loan, have been noticed. More may be established by a simple exertion of intellect.

The following text of VRĪHASPATI is cited by RAGHUN-ANDANA under this head:

CCCLXXXIII.

VRĪHASPATI:—When a village, a field, and a garden, are recorded in the same grant, if any part be occupied, they are all legally possessed.

“A grant;” a written document or the like. Thus RAGHUN-ANDANA. Consequently he considers the term “grant” as signifying a written instrument in general. Thus, on a partition

among brothers, whatever village or other land is inserted in the written record of partition, should some part thereof be occupied, and the remainder be not possessed, still the whole land is considered in law as actually possessed, not as property neglected. But if the relinquishment of it have been declared in the presence of arbitrators or the like, then, since an express declaration prevails over logical inference, it is determined by the award of arbitrators to have been abandoned.

CCCLXXXIV.

VRĪHASPATI :—In immoveable property obtained by an equitable partition, or by purchase, or inherited from the father, or received from the king, a title is gained by long possession, and lost by *silent* neglect.

2. Even in property simply obtained *with or without a fair title*, which a man has accepted and quietly possessed unmolested by another, he acquires a title; and in like manner he forfeits one by silent neglect.

Property inherited from the father, which had devolved on him from his father, or which he had *himself* gained; this is of two sorts, obtained by partition with brothers, or acquired by purchase: *in* such property of the father, obtained in these two ways, a title is *gained by possession*; and this is a general instance comprehending other wealth inherited from a parent. Or four sorts of property *are intended by the text*, obtained by equitable partition, acquired by purchase, inherited from the father, and received from the king. It should not be argued, that the mention of “property obtained by equitable partition” is useless, because that is suggested by the term “inherited from the father.” It is mentioned to include what is obtained by equal partition among partners in trade and adventure. Nor should it be argued, *on the other hand*, that the term “inherited from the father” is superfluous, because that is included under “property obtained

obtained by equitable partition." It is mentioned to include the undivided patrimony. In *all* such property a title is lost by silent neglect. For example; four persons, inhabiting the same village, any-how acquire a certain quantity of land, and, dividing it into four shares, execute a written document; one does not occupy the portion allotted to him by that writing, but, on the contrary, neglects it, and another holds the possession of it: in this case, he who silently neglects his right, forfeits his title. In like manner, one who has purchased land, but does not take possession of it, forfeits his title by his silent neglect: but he may recover the price after much discussion. Again; one inheriting wealth left by his father, does not occupy it, and another does; in that case it belongs exclusively to the possessor. In like manner, if a man do not occupy land or the like received from the king or other benefactor, but, on the contrary, neglect it, his title is lost.

It should not be affirmed, that the mention of loss by silent neglect is useless, because it follows, from declaring a title gained by possession, that he who neglects his right forfeits his title. It is pertinent, as it shows this consequence, that, if property obtained by a just partition be fortuitously unoccupied, but not *grossly* neglected, the title is not lost. Is it, or is it not, requisite that the property should have been unpossessed during the period of twenty years, which is propounded by YÁJNYAWALCYA? It is answered, *undisturbed* possession without ownership during twenty years, not the owner's want of possession, is propounded by YÁJNYAWALCYA as the legal prescription by the silent neglect of the owner: thus the period propounded is that in which a notorious fair title is forfeited; but, in the present case, silent neglect precludes proof of the title. It should not be argued, that a right is vested immediately after purchase or the like, and is in this case lost by neglect. Were it so, nothing could prevent a reference to the period of twenty years becoming requisite; but, in the present instance, it is inferred, that a notorious title does not exist, because a doubt may be entertained whether the partition was not disapproved; or whether the heir has not given up his share to a coheir, and accepted elsewhere an allotment, which he enjoys; or whether he has not given away his share to some stranger; or, in the case of purchase, whether he did or did not assent to the bargain; or, in the instance of paternal wealth, whether

ther the father did or did not give it to the present possessor; or, in the case of a present received from the king, whether the royal donation was accepted or not. Hence there is no reference to the period of twenty years; but the true meaning is, that his title is lost then only when he has not taken possession, though healthful, able to occupy the land, and unopposed by any other claim besides that existing donation.

If many villages or other tracts of land be specified in the same writing, the possession of a part is, in law, possession of the whole, as declared by VRĪHASPATI. In the case of wealth received from the king, there are other points to be considered. "In property simply obtained, *which a man enjoys unmolested by another, he acquires a title;*" but if any one contested it when possession was first taken, occupancy, without refuting that claim, is not sufficient *to establish a right*. Hence, a fair title in uncontested property being gained by single occupancy, in the presence of superior power or the like, and during the government of a king, *from whom redress might have been obtained*, and that title becoming known to many persons, its forfeiture cannot afterwards be inferred without a sufficient cause, such as gift, sale, barter, adverse possession during twenty years, and the like. Consequently, after the period of occupancy, a written document, with possession during some short time, is sufficient evidence *of a title*; before that period elapse, the writing is singly sufficient proof; even after it has elapsed, a written document is evidence, provided the party were precluded from taking possession, by sickness, by absence in a foreign country, or by any other sufficient cause: *these are evidence of a right*, so long as the adversary do not bring proof that no fair title existed. Hence it is suggested, that writings and the rest are not *in general* sufficient evidence *unsupported by proof of possession or of a fair title*.

In the text of NĀREDA (CCCLXXXI), "by kinsmen" is exhibited in the third case denoting an epithet; consequently the meaning is, "by a written memorial of partition attested by kinsmen as witnesses." It is accordingly said by JĪMÚTAVĀHANA, they are here mentioned, intending that, on failure of them, the attestation of other witnesses should be taken. As the evidence of persons similar in class and profession to the plaintiff and defendant is preferred, but others may be examined in the second instance,

instance, or on failure of such ; so, in a dispute concerning partition, the evidence of kinsmen is required in the first instance, and the testimony of others in the second, or in their default. If a record of partition, attested by others than kinsmen, be produced, the king should therefore ask the reason why they were not made witnesses ; and if the plaintiff cannot allege a *sufficient* cause, a doubt arises on the authenticity of the document. But CHANDÉSWARA says distinctly, “ it must be cleared by the evidence of witnesses.” The term (*jnyāti*) is expounded, in the *Vivāda Chintāmeni*, persons who saw the partition. According to these two commentaries, it is only suggested, by that term, that the doubt must be cleared by the evidence of witnesses. There is no objection to a similar exposition on the gloss of JÍMÚTAVÁHANA. But, in fact, it is declared, that written evidence prevails over mere verbal testimony : according to the observation of JÍMÚTAVÁHANA, since a writing prevails over mere verbal evidence, the prior mention of witnesses is incongruous. Again ; if kinsmen, not named in the attestation of a written document, are preferable, they must surely be preferred when they are named in such a document. A writing, attested by them, is *the best proof* ; on failure of that, *an instrument* attested by other witnesses ; in default thereof, mere verbal testimony ; on failure of this again, evidence of separate acts : such briefly is the order of proof.

The term (*jnyāti*) being expounded, in the *Vivāda Chintāmeni*, a person who saw the partition, it follows, *that* the evidence of kinsmen and others *is meant*. Still the preference of them above others must be deduced from the text of SANC’HA (CCCLXXXVI). It should not be objected, that, from the coincidence of the precepts, near kinsmen must be understood by the term *jnyāti*. Were it so, a disparagement to NÁREDA would occur ; to obviate which, it is necessary to acknowledge that the word bears a general import. The admission of a secondary sense is proper, but the order of evidence is deduced from reasoning. Such is the opinion of the commentator.

CCCLXXXV.

YÁJNYAWALCYA :—A partition being denied, let the

the truth of it be ascertained by the evidence *first* of near kinsmen ; *then* of relations more distant ; then of witnesses *who are unconnected with the parties* ; *then* by written proof, or by separate acts of ownership in house or field.

First, kinsmen, within the degree of *śapindas* ; on failure of such, any persons connected with the parties, as suggested by the general term relations ; in their default, strangers also may be witnesses.

JÍMÚTAVÁHANA.

Consequently, witnesses of three descriptions, and written proof, being separately mentioned, the evidence of persons who saw the partition, though not named in a written instrument, is shown to be sufficient proof, in order *as enumerated*. In the *evidence of* near and distant kinsmen, and *of* strangers, inferiority is intimated, in order as they are named ; else they would not have been separately mentioned. Such is the opinion of JÍMÚTAVÁHANA. “ Separate ” (*yautaca*) ; distinct, agreeably to the sense of the verb *yu*, mix or unmix : *the meaning consequently is, by unmixt or separate acts of ownership in house and field*. The commentary on the *Dravyabhāṣya* explains *yu* as signifying to unmix. But others explain the term according to the *literal* sense of the verb *yu* to mix : coparcenary is therefore inferred from mixt *or joint acts of ownership in houses and fields*, on the part of the undivided coheirs ; and conversely, separation *of coheirs is inferred from separate acts*. Such is the meaning according to these lawyers.

CCCLXXXVI.

SANC’HA :—A doubt having arisen on the question whether a family has been divided nor not, and the nearer kinsmen being unable to answer it from their own knowledge, the more distant relations ought to be witnesses.

If it be unknown to the nearer kinsmen, the family (*cula*) or more distant relations may give testimony, not an unconnected person ;

person ; but if it be unknown to the distant relations, any other may be witness. Accordingly, kinsmen, being chiefly required, are alone mentioned by NÁREDA. JÍMÚTA VÁHANA so comments on the text ; for YÁJNYAWALCYA notices the evidence of distant kinsmen, and of other witnesses.

The word family (*cula*) having been explained by ancient authors as signifying the fourth house, *or the vicinaga*, some lawyers hold that by this term are meant the neighbours. Consequently, distant relations are suggested by the conjunctive particle subjoined to “nearer kinsmen.” On failure of such, the neighbours, suggested by a term signifying the vicinage, *may be witnesses* : in their default, any others may give evidence. Or else, since the Dictionary of AMERA makes *cula* synonymous with genus, or multitude of beings of the same kind, this term may signify *peers or persons similar by class and profession* : on failure of such, the evidence of others who, though dissimilar, are approved by Sages treating of administrative justice, must of course be admitted. It should be here remarked, that, the king and his officers being superior in power to all others, an instrument, executed in their presence, and attested by them, is most authentic.

“Whether a family has been divided or not :” on the subject of a distribution of wealth which has been inherited by a family, and of which a distribution is to be made, and on a doubt whether partition have or have not been made, *kinsmen ought to be witnesses*. RAGHUNANDANA.

He is a sharer with the family who obtains partition from them, or who claims the heritage, or a distribution of it. A doubt arising on this matter, *kinsmen ought to be witnesses*. Consequently the sense in effect is, *they ought to be witnesses* if a doubt arise concerning the distribution of a heritage : and that may be of two sorts, on the question whether partition have taken place, and whether the distribution be equitable or not. Such is the meaning of RAGHUNANDANA. It is proper, because near kinsmen best know the fairness or unfairness of the distribution.

NÁREDA himself explains the subject, to which he alludes, in saying, “it must be cleared by verbal evidence of separate acts.”

CCCLXXXVII.

NÁREDA :—Of undivided brethren the religious duty is single, but after partition such duties are separately fulfilled.

2. When coheirs have made a distribution, the acts of giving and receiving cattle, grain, houses, land, household establishments, dressing victuals, religious duties, income and expences, are to be considered as separate and (conversely) as proofs of partition.
3. After separation, but not before it, brothers may become witnesses or sureties for each other, and may reciprocally give and receive *presents*, or *make contracts with each other*: but, in regard to *property separately acquired*, they may do so even *before partition*.
4. Those by whom such acts are publickly done with their own separate property, let men consider as divided, even without written evidence*.

Intending to declare *reciprocal* gifts, and similar acts, to be proofs of partition, the legislator first propounds, in the form of a precept, the *first* verse (CCCLXXXVII 1), to obviate doubt when religious duties which fall within the description of such acts are proved. The doubt may be thus exemplified: if all the brothers succeeding to the wealth of a deceased father must, though undivided, severally perform the acts appertaining to the order of a housekeeper and to the worship of deities, as they must severally perform the oblations at noon and twilight; or if they may with propriety unite for the performance of a single act of religion, though divided; then the doubt, whether partition has or has not been made, would not be cleared by the joint or sepa-

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* Two of these verses have been already cited apart from the context; V. ccclxxx, and Book I, V. cxli. T.

rate performance of duties : but now, since undivided brethren are alone commanded to participate in single acts of duty, and disunited brothers to perform such offices severally, that doubt is cleared. Those acts, appertaining to the order of a housekeeper, which are jointly performed even by separated coheirs, are not meant in the text of NÁREDA. These are voluntary rites, namely, a sacrifice, the consecration of a pool, or the like ; for it is universally held that brothers, though united, may severally do such acts, in like manner as others may perform them jointly or severally. It will indeed be mentioned, that even a husband and wife may separately do such acts. Neither are constant duties, such as oblations at noon and twilight, *intended by the text* ; for the consequence of fulfilling or omitting such duties is pronounced peculiar to the *individual* person. Consequently those acts must be understood, by the omission of which there accrues evil relative to the order of a housekeeper, such as loss of wealth or the like, or by the performance of which there accrues good relative to the same *secular* order, such as increase of wealth and the rest. *It must be likewise understood* of the double and single sets of oblations to ancestors, and so forth. It would be vain to expatiate.

“ Religious duty ” is explained by CHANDÉSWARA and VÁCHESPATI MISRA, as signifying the oblation to the assembled gods and the like. Under the term “ and the like ” is comprehended the service of guests, and similar offices.

“ Acts of giving and receiving ; ” without consulting each other : purchase of “ cattle, ” or similar things : raising “ grain : ” separate “ field, ” or acceptance of mortgage or the like : “ dressing victuals, and religious duties ; ” the double set of oblations and the rest : “ income ; ” the acquisition of means of subsistence and so forth : “ expences ; ” the alienation of wealth : *all these are proofs of partition*. Thus MISRA. According to his opinion, the first verse (CCCLXXXVII 1) is not a precept, but solely intended to show that *separate* acts of religion are proofs of partition. This opinion is accurate. But some explain “ grain, ” as signifying the sale of corn, such as rice *or the like* for food.

Thus, if one coheir be witness or surety for a loan advanced, or other contract made by another, or if one receive a present given by the other, they must be considered, in respect of each other, as divided coheirs.

MISRA.

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This is also declared in the text of YAJNYAWALKYA ; “ by separate acts of ownership in house or field ” (CCCLXXXV). Are those acts severally or conjunctly proofs of partition ? If it be answered, each is sufficient proof ; then partition is established even by the simple acquisition of wealth : and if this be deemed admissible, the text which forbids the division of wealth acquired by a parcener without using the joint-property (CCCLIV 2) would be unmeaning, since a gain made by a coheir before partition on his sole account could not be supposed. It should not be objected, that *acquisition* is not proof of a *prior distribution*, because it is resisted by the actual notoriety of the reverse. Were it so, it might be supposed to be no proof of partition in any circumstances, because a separate acquisition may be made even without a previous distribution. That without which another thing may exist, can be no proof of it ; were it so, *the fact*, that the animal is a biped, would prove that he is a *Bráhmaṇa*. It should not be argued, that the word “ separate ” conveys the denial of a common gain. That cannot be affirmed by a dilemma ; for what can the dilemma be in such a denial ? Is it that a joint acquisition sometimes has not taken place, or has not hitherto occurred ? The first cannot be affirmed ; for, even during coparcenary, a common gain occasionally does not take place whilst the parcener is asleep, or eating, or busy in making an acquisition for his sole benefit : it cannot become proof, since partition had not really been made at that time. The second also cannot be affirmed ; for a common gain may take place at some *future* time. It should not be argued, that the want of proof of a subsequent joint acquisition is meant. That could be no evidence at the moment when partition is questioned. To this it is answered, these acts severally become proofs of a prior distribution. For example ; the separate acquisition of property with the aid of paternal wealth, other than what may have been received through the favour of the father, is proof of partition ; and so is a gift of paternal wealth, made in the presence of a coheir without his assent, or the receipt of rent paid by villagers at the same time with a similar receipt of rent from them by a coheir. The like may also be inferred in other cases, by a simple exertion of intellect.

The purchase of cattle, with wealth inherited from the father, may be proof of total separation in respect of cattle inherited

from him : food prepared in distinct places is *evidence of separation* ; and so is the purchase of rice or other articles, the price of which is separately paid *by each purchaser* out of wealth inherited from the father. But, when it is observed that undivided coheirs having large families, and perceiving inconvenience in preparing their food together, dress their victuals apart, that separate cookery is merely intended for their own convenience : but preparation *of grain* for oblations to deities, for the entertainment of guests, for the support of servants, is not in that case separate. Would not the distinct preparation of food be no proof of partition among coheirs, who, though disunited, perform the worship of deities, and other offices, out of joint property set apart for that purpose ? This question is answered by asking, what difficulty follows, since the partition may be proved by other separate acts ? Accordingly they are likewise propounded ; else, since the preparation of food is necessary for all, that single proof might be *always* brought, and the mention of “ acts of giving and receiving ” would be therefore superfluous. But, in fact, they only are divided coheirs who dress victuals separately, (and without consulting any other,) for all purposes common *to undivided coheirs*, for their families, connexions, guests, and the like : they only ought to perform separate acts of religion. Accordingly, since the following text, after having declared single the performance of religious duties among parceners living together and partaking of the same food, pronounces it separate among disunited coheirs, *therefore* separation in respect of food is exhibited as constituting partition. Hence, although the remainder of an estate may be undivided, it is not considered as proof that partition has not taken place ; for it frequently happens that disunited coheirs have joint property.

CCCLXXXVIII.

Among coheirs living together and partaking of the same food, due honour shown to a *deceased* father, to deities, and to priests, shall be single ; but, after partition, that shall be *done* in their several houses.

What then is the meaning of the term “ partition ? ” This question might be proposed, and is thus answered ; for it does not mean

mean division of the patrimony, since it would follow, that no partition could take place among those who are destitute of inherited wealth. Does it not mean the division of any property whatsoever? Accordingly YÁJNYAWALKYA has said, "one who is able to earn a livelihood, and claims not a share of the joint property, may be disunited from the family, on giving him some trifle as a consideration to prevent future strife" (CVI); and there can be no necessity of separate acts of religion without partition. *It bears not that meaning*; for it might be supposed that no separation could take place between those who have no property whatsoever. Consequently, the meaning of partition is separation in respect of food prepared for the entertainment of guests and relatives, and for other purposes which are common *among united coheirs*. How then can separation take place between those who are not visited by relatives or guests? Distinct preparation of food, after an agreement in these words, "henceforward we are disunited," is partition. Afterwards their acts of religion, and wealth or the like received on some consideration relative to the father, are separate; before that agreement they are single. It should not be objected, that, since partition may be proved by the separate preparation of food, the mention of other proofs is vain: if such dressing of victuals alone constitute partition, it is proved by the declaration of the parties; to mention it again, as evidence of a separation, is in a manner absurd. Since the term denotes the distinct preparation of food after *a declared* intention *of living disunited*, a dispute may arise in a case of doubt whether such a declaration was made: and, in that case, the previous agreement is in some instances proved by the sole evidence of *separate* preparation of food; but, in others, it is more fully established by the several acquisition *of wealth* or the like, by evidence of double acts of religion, by purchase *separately* made, and the like.

Brethren cannot become sureties nor give evidence for each other, nor make nor receive mutual loans (Book I, V. cxi). What is propounded by NÁREDA (CCCLXXXVII), signifies that they should reciprocally shun the gift and receipt of presents on spiritual considerations, out of joint property; the mutual connexion consists in avoiding such acts: but it is not the meaning that they must reciprocally shun giving evidence or the like; for

any one coheir must avoid bearing testimony *for another*. The text (Book I, v. CXL) had been delivered by YAJNYAWALCYA under the title of Sureties ; it is consequently a prohibitory precept. The denial of legal evidence, and the rest, therefore indicates coparcenary ; testimony given *by one for another*, and so forth, indicates partition.

One parcener gives a common chattel to another, who accepts it, thinking, “ let him now give it ; hereafter his share will be so much the less, because he has relinquished this on a religious consideration for his own sole account :” since partition has not actually taken place in this instance, the gift would not be proof of separation. If to this it be answered, that which ought not to be done (for the gift of joint property, to a sharer of it, is forbidden by the law), has been done through ignorance ; *we rejoin*, this must be called by some other name, for in fact such an ignorant person is scarcely found at this day.

The words “ give and receive ” likewise denote sale and purchase, or other contracts. This should be noticed. Partition of that property only in regard to which evidence has been given is proved *by this circumstance*. But, on the subject of slander, violence, or the like, there is no offence in a brother giving evidence and so forth, although he be an undivided parcener. However, kinsmen should not be made witnesses, that being prohibited by the following and by similar precepts : “ a kinsman might speak under the influence of partial affection.” But MISRA observes, it is not the practice for parceners to become sureties for each other, and so forth, before their separation.

Since partition between husband and wife is impossible under the text of APASTAMBA (LXXXIX), it is implied, *that they cannot give evidence for each other* ; else, all being alike, the separate mention of husband and wife would be useless. “ Before partition ” (Book I, v. CXI) is therefore unmeaning in this instance. It should not be argued, that the term is used to authorise the gift or alienation of female property, because a wife is independent in regard to such possessions ; and thus the gift or alienation of that which has been acquired by personal labour or similar means is prohibited. Still there is no argument to prove partition with her. Nor should it be asserted, that the text of MENU (Book II, Chap. IV, v. LVI) furnishes the argument, because

because that shows the property of the husband in wealth acquired by the wife herself. It does not show coparcenary; for, if the text be taken in a literal sense, the husband alone has the property: were it even admitted, the term "undivided" would be superfluous, so far as relates to the husband.

When this difficulty is proposed, some lawyers reply, it must not be referred to that word, because it is a rule that an epithet is not pertinent if it be possibly incompatible. Others deduce from the text which declares property common to the married pair, that a wife has an interest in the wealth of her lord; but, her title being inferior to his, a gift or alienation made by her is forbidden: partition with a wife may take place under the text of YÁJNYAWALCYA (LXXXIII); for the precept of APASTAMBA, denying partition, is directly contradicted by YÁJNYAWALCYA. From the sequel of the text of APASTAMBA, it appears that he denies partition or separation in acts relative to the nuptial fire, in maintaining the *sacrificial* fire for one who has a consecrated hearth, and in acts of religion appertaining thereto; he does not deny partition in respect of wealth. It should not be argued, that a distribution of chattels is denied by another text of APASTAMBA (LXXXIX). YÁJNYAWALCYA declares partition in express terms; but that law merely implies, that a wife has property in the wealth of her husband: accordingly the text last cited is pertinent, as it explains the reason of the *former* precept; for the act of expending such wealth demonstrates ownership, not the impossibility of partition in respect of it: and thus the worship of God, and other duties, to be performed in common with a wife, while remaining in the order of a house-keeper, must be practised by her after partition; but the whole circle of acts relative to the nuptial fire can only be then performed in concert with her lord. It should be again noticed in this place, that wealth acquired by the wife through personal labour, and what has been received from the family of the father, mother, and husband, or any one of them, she must share with her lord, under a text above cited (Book II, Chap. IV, v. LVI); but his other wives and his sons have no participation of it, because the right of the husband is subordinate to that of the wife.

Since the man has the sole property of wealth appertaining to his wife, as shown by the text above cited (Book II, Chap. IV, v. LVI),

v. LVI), are not his heirs entitled to her succession? It should not be answered, her incapacity for possessing exclusive property bears allusion to her dependence; for it is universally admitted, that she is capable of acts prescribed by the *Vêda*, which are defrayed out of her own property. Since a slave, like a wife and a son, is, by parity of reasoning, independent in regard to wealth received through favour, the acts of religion prescribed by the *Vêda* may be accomplished with that alone. Nor should it be argued, that their right to their own acquired wealth is proved, because acquisition is shown by the expression "wealth which they may earn," and because that is an act of which property is the fruit. There is no objection to the divestiture of their right after vesting property in the husband and the rest; and it may be affirmed, that a right so accruing to their master, husband, or father, is the effect produced by their acts, of which property is the fruit.

To the question proposed the answer is, the dominion of the husband over any thing, not technically denominated the exclusive property of women, is propounded in the text of CĀTYĀYANA (CCCCCLXX), but not his sole dominion; and that only shows her subjection, because it was received through her connexion with a living husband. Again, the phrase "three persons are declared to have no wealth" signifies, that they have no independent property; it cannot be affirmed, in the literal sense of the phrase, that a woman has no wealth belonging to her; since the existence of female property, and the right of the wife over the estate of her lord, oppose the *absolute* negation of *all* connexion with property. Accordingly RAGHUNANDANA and others have justly said, other sons shall have shares of that which is acquired without the use of the patrimony, by one whose father is living. Again, on the death of a wife, even though she leave a son or other descendant, her husband, not her son or other lineal heir, succeeds to the wealth acquired by arts, *such as painting or spinning*; for he had ownership thereof, even while she was alive.

According to the opinion of those who affirm, that, because a wife has an interest in the estate of her living lord, (under the text which declares wealth common to the married pair,) therefore, after the death of the husband, his son, or other heir, and his

his wife, have property similar to that which he enjoyed, does it not follow, that a son, or other heir, has, in like manner, property similar to her's, in her wealth, after her demise? This should not be deemed admissible; for it is shown, that sons and the rest have only a title in what is technically named the property of women, and no one has propounded the right of a son, or other descendant, to such wealth belonging to a woman, *which she acquired by labour or similar means*. If this be alleged, the question being proposed, who then shall inherit such wealth belonging to a woman, since legislators have not ordained the succession of the son or other descendant? it is answered, her husband, being her master, shall alone succeed; but if he die first, the offspring of the woman shall inherit, as nearest of kin, conformably with reason. In like manner, the title of a wife in the wealth of her husband, which arises solely from *their* marriage, expiring on her death, the offspring of the husband shall alone succeed, by a text which shall be cited (CCCCCLXXVII 2). It should not be argued, that the precept relates only to property devolving on remote, in default of near, heirs. That text relates to wealth, of which the property is vested by right of affinity. These lawyers thus briefly reconcile the difficulty.

But, *noticing this objection*, 'as for the right of a wife, it is declared that she has property in the wealth of her husband; she might therefore claim partition with him: but, *were it so*, partition, not the prohibition of it, would be denoted by the terms of the text' (LXXXIII); MISRA replies, "No; for she is declared to have no property" (Book III, Ch. I, v. LI). The right of the wife relates not to succession, but to sacrifice only, her title being justified by co-operation: it does not contradict the fact of her having no wealth, for that cannot be disproved by mere reasoning. But partition may take place between husband and wife, under the text above cited (LXXXIII), as is observed in the *Retnâcara*.

It is the opinion of the objector, that partition might be claimed from her husband by the wife singly, without its being made with sons, because she has an interest in the estate. But the author states, as the opinion of the *Retnâcara*, that partition may take place with a wife, as with sons, without a *previous* title. To this some lawyers object the capacity of a wife to possess wealth;

wealth; for she does actually possess that which is technically named female property: hence the phrase, "they have no wealth exclusively their own," does not determinately signify that she is destitute of connexion with property, but suggests a right accruing to her lord through the acquisition made by the wife; for it coincides with the text of MENU, "the wealth which they may earn is acquired for the man to whom they belong" (Book III, Ch. I, v. LII); and, in this instance, his right does not arise from acquisition, but from connexion. Yet, if the phrase, "they have no wealth exclusively their own," signify, they are not independent in regard to their own acquired property; or, if it signify, they are destitute of connexion with that which has been earned by themselves; then the right of the wife over the estate of her husband is uncontradicted. There is no authority for limiting her title.

But RAGHUNANDANA affirms, that the denial of partition, propounded by APASTAMBA, is understood generally. Hence this meaning is deduced; a wife cannot, like a son or brother, claim it in her own right. The special law, delivered by YÁJNYAWALKYA, contradicting that *general precept*, shows partition with a wife, at the same time with a distribution made among sons. Again, since it would not be forbidden, unless it could have been supposed, RAGHUNANDANA admits the property of the wife in the wealth of her husband, as the ground on which it might have been supposed. This should be thoroughly examined: were it so, the mother of an only son might claim partition with him, in her own right; but there is no difficulty, if it be admitted that she who has a son has no property in the wealth of her deceased husband, and consequently that partition could not *in this case* be supposed.

Others thus explain the text of APASTAMBA: there is no partition between husband and wife in respect of acts of religion, nor in regard to the receipt of wealth; there is no such distinction as the following, "this chattel belongs to him, not to his wife." But the division of property is not *here* intended by the term partition: it signifies the disunion of persons; and the text denies such separation, for it coincides with another which describes the wife as half the body of her husband, and thus she has an universal right to his wealth and so forth. By a special text,

text, the husband has no title to *that which is technically denominated* the property of women; but the share which is given to her when partition is made among sons, belongs to both *husband and wife*, for it is different from the peculiar property of a woman. It must, however, be established, on *arguments derived from common sense*, that she has some independent power over it: but partition is only granted for convenience; she, who is one person with himself, can never be truly divided from him. Such is the modern mode of interpretation, following the opinion of VIJNYÁNÉSWARA.

Since the text of 'APASTAMBA also forbids the separate acceptance of wealth, partition between husband and wife is not acknowledged: as for the allotment of a share, as propounded by YÁJNYAWALCYA, its full sense is the reservation of a portion out of his own patrimony, on account of his wife, *and which portion should be* exactly equal to the share of a son. Thus the term "before partition," *or undivided*, must be considered as an epithet expressing a matter of course, so far as it relates to the married pair. Authors thus expound the law. This brief explanation may suffice.

CCCLXXXIX.

VRĪHASPATI:—A violent crime, immoveable property, a bailment, and a former partition, must be ascertained by just inference, if neither written nor oral evidence exist:

2. A forcible attempt, a mark, and an instrument of offence, are *presumptive* proofs of violent crimes; possession of immoveable property is proof of a title; and separate wealth, of partition:
3. They whose income, expences, and wealth are separate, who reciprocally lend money at interest, and who make commercial bargains with each other, are doubtless disunited.

If there be neither writing nor witness to prove a violent
crime,

crime, or any other of the four matters *mentioned in the text*, it must be ascertained by just inference. The legislator subjoins the *grounds of presumption* in the case of a violent crime: “a forcible attempt;” the use of force as the means of killing or the like: he who, before the homicide, made an attempt to slay *the deceased*, may be justly suspected of the murder. So in other cases. This, and “a mark” or token, and “a weapon of offence” or armed bludgeon, are three *presumptive* proofs of violent crimes. The possession of landed property is a *similar argument of a fair title*: the exceptions relative to this subject should be sought under the title of Administrative justice. In the case of bailment, the former acknowledgment, and the renewal of a deposit, or any similar circumstance, should be considered as a strong ground of *suspicion*. In respect of partition, separate wealth is *presumptive* proof: having made this a general instance, the legislator himself explains it in the third verse; those *coheirs* whose income, expences, and wealth are separate, who severally acquire property, and make distinct gifts and separate bailments of their effects, are disunited. Again, they who mutually lend money at interest, (who reciprocally give and receive loans,) and those who make commercial bargains with each other, (who transact purchase and sale the one with the other,) are disunited: all this relates to wealth inherited from the father or other ancestor.

If coheirs, living together, and partaking of the same food, do such acts with the patrimony, it is *nevertheless* admitted that they are undivided: hence commercial transactions *with each other*, and the like, can be no proof of partition. If this be alleged, the answer is, then wealth acquired upon the divided patrimony, but without separation in regard to food, would belong to all the coheirs; for the separate preparation of victuals has been already mentioned as the meaning of the term partition. In a doubt respecting a prior distribution among those who severally transact commercial affairs and the like, but without having separated their preparation of food by a previous agreement, what is the rule of decision if the dispute concern that property to which the transactions relate? Deduce the principle of *decision* from reciprocal gift and receipt; for, *in that case*, donation, which is an act *done* for a spiritual end, has been made in contemplation of
abundant

abundant fruit *from liberality to a kinsman*. Again, the people know whether these coheirs have separated their *preparation of food* by previous agreement or not. Again, do the peasants deliver to them, severally, the provisions and other dues from their village? Hence also a principle of decision may be deduced. In like manner, the question may be determined by their annual obsequies *for a deceased ancestor*, and by their worship of LACSHMÍ or other deities and the like. On this topic, JÍMÚ-TAVÁHANA adds, this and similar acts can only be done severally by divided coheirs; any one of them must therefore be considered as presumptive proof of partition. It should not be objected, that, "such acts" (CCCLXXXVII) signifying many such, it is intimated that they are collective *proofs of separation*. The texts are founded on reason; and the several arguments on each being equal, presumptive proof may be admitted on failure of written and oral evidence.

CHAP. VII.

ON THE

RIGHTS OF COHEIRS.

SECT. I.—*On their Rights after Partition.*

CCCXC.

NÁREDA :—When there are many descendants of one man, who severally perform sacred rites, make several contracts, and have different employments and different qualities, without concurring in the acts of alienation, *then, if they severally give or sell their own undivided shares, the alienation is valid.*

When many persons, though descendants of one man, do not concur in acts which denote coparcenary, when they do not join in them, that is, when they are disunited, (but MISRA expounds it, when divided coheirs are not re-united,) then they severally perform sacred rites, such as oblations to the assembled gods; and make several contracts, such as loans at interest and the like. “They may have different employments, &c. ;” severally or different is connected with this part of the sentence, for it has no inflection because it is indeclinable: the sense therefore is, they may have different employments, or severally protect *their respective families*, and fulfil other duties; and they may have different qualities, as obedience or the like: consequently, they may

may severally perform all these things. Such is the opinion of MISRA. Others explain this phrase as an epithet of the agent in the sentence: the meaning therefore is, oblations to the assembled gods must be severally made by active and virtuous coheirs; this obviates the reflection of ignorant and lazy men, "those acts are performed by our brother alone, *that is sufficient.*"

The legislator subjoins the fruit of partition (Book II, Chap. IV, v. VI). The *Vivāda Retnācara*, and *Vivāda Chintāmeni*.

According to the opinion delivered in both works, the alienation of property equivalent to his own share, by any one brother during coparcenary, is not proper; but, with the consent of other coheirs, division, or *separation of his own*, is evidently valid. Consequently, if any one coheir do so, the gift, sale, or other alienation is good in law, because it is the act of an owner, and because joint-property, not enumerated among things ungiven, or *void donations*, is only mentioned among things which ought not to be given away: but it must not be questioned whether that share, *which is alienated*, falls upon all the brethren, nor whether he shall receive an allotment out of the remaining shares of other brothers; for, in commenting on a text above cited (CCCLXXIII), it has been said, whatever is given away by any one parcener for his own purposes, without the assent of the rest, shall be deducted out of his share; and this stands uncontradicted by any author. But if any one undivided parcener aliene the whole, then surely *the act is null*. VRĪHASPATI declares it (Book II, Chap. IV, V. xviii 5). "Heir," in this text, is explained in the *Retnācara* as signifying 'son.' Divided heirs are here declared to have no power to aliene the immoveable heritage, meaning that the alienation is invalid, because it is made by one who is not owner of *the whole*. "Immoveable" is a mere instance; for the reasoning is equally applicable to gems or the like. But JĪMŪTAVĀHANA and the rest hold, that coheirs, even though divided, have no power to give or otherwise aliene their own shares, nor that of another brother; hence a coheir ought not to give away even his own share of immoveable property without the assent of the rest: this is founded on the sin of distressing another brother by a gift, sale, or other alienation made by a misbehaving person; but the donation is not void.

On the former opinion, why is it said, if any coheir aliene
 "the

“ the whole ;” for the author of the *Retnâcara* has almost expressly declared, that a coparcener’s own share ought not to be given away : thus, since he permits divided coheirs to dispose of their own shares, it is intimated, that the same is permitted to undivided coheirs ? The answer is, there is great sin in giving away the whole, but less in aliening the amount of his own share. Further inferences may be deduced by a simple exertion of intellect.

MISRA remarks, that a text formerly cited (Book II, Ch. IV, V. xxxiii) is a principle of law : the assent of townsmen, of heirs, and of kindred, *is there required* for the publicity of the gift ; the assent of neighbours, for the sake of preventing disputes concerning the boundaries. But the delivery of gold and water *is also directed*. Since the sale of immoveable property is forbidden *, and the gift of land is alone applauded (Book II, Chap. IV, V. xli) : if a sale must be made, it should be done in the form of a donation, delivering gold and water : such is the purport of the precept.

‘ For the publicity of the gift ;’ else the heirs might dispute it at a subsequent time : “ heirs ” are sons and the rest, daughters and others, in short, eventual successors. Publicity *is required*, that the townsmen and *the giver’s* own kinsmen may be witnesses. The phrase, “ there is no sale of immoveable property,” is intended to forbid such alienation of it : it is thereby intimated, that a spiritual offence is committed by selling land, not that the contract is void ; for property is equally divested by the voluntary act of the owner in sale as in gift, and it occurs a hundred times in practice. It should not be objected, that, by saying “ land is conveyed by fix formalities ” (Book II, Chap. IV, V. xxxiii), it is intimated, that real property is not divested without those ceremonies, since the term “ land ” would otherwise be unmeaning ; and thus a sale of it without delivery of gold and water must be invalid, and the current practice contradicts the law. There is no argument to prove, that land is not transferred like gems or other effects by a sale, or act divesting property. This

* “ No sale of immoveable property can be *effected without the formalities of donation* ; and a mortgage must be made with consent of *coheirs*.” This anonymous text is so explained by RACHUNANDANA, from whom the compiler has copied the quotation. T.

This rule concerning six formalities is not a sufficient argument ; for there is no objection to the admission of any other ceremony, as well as the delivery of gold and water, in the case of sale.

Admitting that gift is not *perfect without that formality*, must not sale be also invalid without delivery of gold and water ? It should not be answered, that, although an unessential part be incomplete, the principal object may be nevertheless accomplished. The delivery of gold and water can be no *constituent* member of a sale, which is a temporal act. To the question proposed some lawyers reply, a gift accompanied with gold and the delivery of water are directed to confirm the sale, lest at any time the seller take *back* the thing on pretence of a fraudulent bargain ; for sale or other alienation of immoveable land, which is considered as the source of maintenance, is especially forbidden (Book II, Chap. IV, v. XII) ; and if it be made abominable, present evil may ensue ; else is there not, without the assent of persons residing in the town, an act of the will, that this land shall belong to this man ; and cannot such act of volition, having actually taken place, devert the right ? In fact, the divestiture of property, though past, is not presumed by the arbitrators, since the seller may be influenced by avarice, and *deny the transaction*. In like manner, the delivery of gold and water is directed to obviate litigation, *when the seller*, although the contract be proved by the evidence of kinsmen, *affirms*, “ this bargain was made by me with a fraudulent design :” unless water have been delivered, the validity of the contract may be questioned, if the seller allege a fraud. Sale is incontestably effected by a simple act of volition ; but formality is ordained (Book II, Chap. IV, v. XXXIII) for the sake of proof.

CCCXCI.

VYÁSA :—At a time of distress for the support of his household, and particularly for the performance of religious duties, even a single coparcener may give, mortgage, or sell *his own share of* the immoveable estate.

“For the performance of religious duties,” common to the coheirs: alienation for these purposes is not forbidden. Immoveable property, a corrody *out of mines or the like*, and slaves *employed in husbandry*, are subject to the same rules (Book II, Chap. IV, v. XIV). This text of YĀJÑYAWALKYA is founded on the consideration, that immoveable property is called the source of maintenance; consequently, the loss of the estate, or means of subsistence, *when it is aliened* with the consent of those who partake thereof, shall not be imputed as a fault. As for the practice of kinsmen, though divided, forbidding a sale of immoveable property made by a man whose general conduct is good, that is founded on a text above cited (Book II, Chap. IV, v. XVIII 5). “A single parcener has no power to give, pledge, or sell the whole;” meaning his own share and that of another brother. *But men practise the purchase of land*, paying to another brother or parcener *his share* of the price.

Even though the reason of the law be not *manifest*, landed property, though divided, ought not to be sold without the assent of coheirs, under the authority of the text. A certain author has so remarked; and some lawyers deem this reasonable. In fact, the sale or other alienation is not valid without the consent of the coparceners. But if the son of him who acquired the immoveable estate sell it, no other coheir should dispose of it *again*; but the price should be duly distributed: the first contract being valid by his consent, the second is void.

To elucidate this subject by expounding the various opinions *on it*, partition with a son born after a division is again noticed *in this place*. On this subject MENU propounds a text (CI).

Sons having made a partition with the father, one born afterwards shall take the whole of the paternal allotment on the death of the father. If that parent wish to make a second division in his life-time, *the son born after partition* shall receive his due share out of the father's wealth, not out of the portions allotted to the brothers formerly separated: this is made evident by the word “only, or alone.” Such is the exposition stated in the *Retnācara*. MISRA also delivers the same gloss; but adds, if his father die after re-uniting himself with his own brother or son, the child born after partition receives his father's share from that person. Such is the meaning of the phrase.

1072 A son

A son born before the distribution, that is, one with whom partition has been made, shall have no claim on the share of his father; nor a son born after it, on that of his brother. Such, according to the *Retnâcara*, is the sense of a text cited from VRĪHASPATI (C). It must be understood, that the son born before partition has no claim on the paternal estate, if there be one born after it. Having propounded the law concerning the share taken by the father in his lifetime, the legislator proceeds to the rule concerning wealth acquired by him after partition.

CCCXCII.

VRĪHASPATI:—All the wealth of the father acquired *by his own labour, and with his separate fortune*, shall descend, if he made a partition with his children, to the son born after the distribution; and the sons born before it are declared incapable of inheriting that property, *even though they return to the joint-family*.

All the wealth of the father shall so descend after his death; in his lifetime he may dispose of it at his pleasure, under the rule of VISHNU (XXV): the father's own will likewise determines the appropriation of wealth acquired by himself, even with the use of property left by the paternal grandfather. But MISRA holds, that he has not uncontrouled power over that which is acquired through the use of wealth inherited from the paternal grandfather. A remark should be here made: it must be remembered, that, according to the *Retnâcara* and other works, the rules concerning the patrimony, which has descended from ancestors, must, when partition is made with a son born after a division, be observed in regard to that *portion of the* wealth inherited from the paternal grandfather, which has been received *by the father* on partition with his sons.

The legislator declares, that debts shall be divided, as well as property; “the duty of paying debts, and the right of giving, pledging, or selling, follow the property inherited,” (C 2). “Pledging;” making *or accepting* a mortgage: consequently

the son born after a division shall alone possess a pledge which has been given by one who received a loan from the father after the partition with his sons. These being particularly mentioned, does he *also* succeed to all civil claims, such as deposits and the rest? Resolving this question, the legislator adds, “they have no claims on each other, except to purification and oblations of water, if either of them die.”

GÓTAMA ordains, “The son born after partition shall take the estate of his father.” The text of YÁJNYAWALCYA contradicts this precept.

CCCXCIII.

YÁJNYAWALCYA:—After a division, a son born of a woman equal in class claims partition *of the original estate*; or a distribution shall be made of the present wealth, exclusive of *subsequent* income and *past* expences.

“A distribution of the present wealth” is another case relative to a coheir deficient in good qualities; consequently a son born after partition, being virtuous, shall receive his share of the whole estate, that is, of both sorts of property, forthcoming and not forthcoming; but one deficient in good qualities shall only receive a share of the present wealth, exclusive of income and expences; that is, without including the subsequent increase, nor what has been consumed by the brethren. Again; the debts contracted by the coheirs must be *first* paid. The shares shall be made good by the divided brethren out of their respective allotments: thus HELÁYUDHA. MISRA and CHANDÉSWARA give a similar exposition. “Equal in class” signifies equal to the father. Since he is exhibited, *by the sense of the phrase*, as the person from whom the son is born by a woman equal in class, parity with him only can be properly understood, not equality with the brother, or other coheir, exhibited by terms subsequent in construction as the person from whom partition is claimed: thus some lawyers expound the phrase. But others explain it, a son born of a woman equal in class claims partition from brothers belonging

belonging to the same tribe ; consequently, sons of the sacerdotal class having already made a partition, shall give no share to their brother of the military tribe born after it, but those who belong to this tribe shall give a share to him. The best of these opinions should be selected on *the inferences of common sense*.

Brothers being mentioned in the text of VISHNU (CII) as the persons who shall give an allotment *to a son born after partition*, may he receive a share from the father or not ? Know, that a son shall receive an allotment from the father alone ; and if he be separate, this text is propounded to clear the doubt whether a share shall not be given by brothers. Consequently, VISHNU and YAJNYAWALKYA have directed, that an allotment shall be received from the brothers ; MENU, VRĪHASPATI, and GÓ-TAMA, have ordained, that the son born after partition shall not receive it from them. On this *seeming* contradiction, the author of the *Pracāsa*, CHANDÉSWARA, MISRA, and SÚLAPÁNI remark, ‘ if the pregnancy was not certainly known at the time of the distribution, in that case, *should a son, who was then in the womb, be born after it*, he shall obtain his share from the brothers ; but a son begotten subsequently to the partition shall only obtain the estate of his father.’ But if the pregnancy be manifest, no partition can be made : so the author of the *Pracāsa* and CHANDÉSWARA. Yet, if the coheirs cannot wait so long a time, one share ought to be set apart for the child, as directed by VASISHT’HA *in the case of pregnant widows* (CXVII). But, should a daughter be produced from that conception, the share *which had been set apart* shall be subsequently distributed among those *brothers*. According to this opinion, sons already separated shall have no share of property which had belonged to the paternal grandfather, and was seized by a stranger, but is subsequently recovered ; for it appears, that it should be distributed like wealth acquired by the father himself. This opinion may be thus discussed : does the title to that property subsist, even during the period of possession by a stranger ? If it do subsist, coheirs already disunited have shares of this wealth formerly acquired : if there be no title during that period, there could be no “ recovery ” of property. If it be said, the right of the owner is devested through the seizure *of the chattel by a stranger*, but a title is again vested by the recovery *of it* ; and that accrues

to the father alone, because he is the nearest descendant *of the late owner*: the answer is, the property of it is vested in right only of the ancestor's title; sons and the rest ought therefore to participate. The seeming difficulty is thus reconciled; if such title to property be *thus* minutely examined, the father would have no independent power over it, even though recovered before partition: the point must be therefore determined by the further consideration of the father's right, as parent *of the sons*, after this mode; he, not sons already disunited, has a right to the wealth recovered by him after partition; but if it be regained by any one of the brothers, he who retrieves it has a right under the text of YÁJNYAWALCYA (CCCLII 2), and the father has a claim as son of the *former* owner: on that opinion, according to which a fourth part is allotted, he who recovers the property has a right to the quarter of it, and the rest of the coheirs have a claim on the remainder; but the father shall receive half, for he is declared entitled to a moiety of that which is acquired by his son with the use of the patrimony: (less would be improper; more cannot be affirmed, since there is no ground for fixing *any certain greater proportion*;) whatever title the father has to certain property, he has the same right to such wealth even after a division.

But if a father, having made a partition with his sons, die after begetting another male child, and if property of the paternal grandfather, formerly seized by strangers, be subsequently recovered by any one brother, what is the rule *of distribution*? Since the equal right of all the coheirs, after the death of the father, is proved, because they are undivided in respect of that wealth, it should be treated like effects acquired by a coparcener. It should not be asked, admitting the same rule of distribution, in the two parallel cases of wealth recovered, and effects acquired by an undivided coheir, by what analogy can it be rendered applicable alike to the instance of property regained by a divided, and to that of wealth earned by an undivided coheir? The want of proof that others shall be excluded from participation therein is *a conclusive* argument. Nor should it be objected, that the observation of certain lawyers is right, that property in the chattel being divested through the seizure of it by a stranger, a title is afterwards vested, by the recovery of it, in him alone who does retrieve it. Were it so, it might become the property of any
other

other person who recovers it: now it must be affirmed, that the right of a chattel, which is regained, vests in no other except the proprietor or his issue. But with the assent *of owners*, he who recovers it shall have a share, as is universally acknowledged; or the chattel shall belong exclusively to him, if the rest had no intention of claiming it. Such is the opinion of some lawyers. According to CHANDESWARA, he alone who retrieves it gains a title, without *any necessity of* inquiring whether the rest did or did not assent. If it be asserted, that, in such a case, should the chattel be accidentally regained by one alone, though all designed the recovery of it, the son born after a partition shall have no share of it, because the participation of all is only ordained in the case of wealth recovered by an undivided parcener: then the opinion of CHANDESWARA would be preferable; for, if this son do not obtain the wealth of his ancestors regained by a divided co-heir, he shall not obtain it, though recovered by an undivided parcener, since no distinction is specified by YÁJNYAWALKYA, and common sense equally opposes it. More on this subject may be deduced, by a *simple exertion of intellect*, from what is stated under the title of Property exempt from Partition.

JIMÚTAVÁHANA, RAGHUNANDANA, and the rest, observing it to be requisite in partition that the mother be too aged to bear more sons, as declared in the texts of Sages (XX and XCVIII), and remarking that some legislators have ordained an allotment for a son born after a distribution, hold, that brothers must give a share to one who is born after partition, if a distribution of wealth inherited from the paternal grandfather have been made by mistake when their mother was not too aged to bear more sons; but, since partition of the father's own estate may be made without requiring that the mother be past child-bearing, a son born afterwards shall take the *reserved* allotment of his father.

It should not be objected, that CHANDESWARA considers the cessation of the mother's periodical uncleanness as indiscriminately requisite in every case *of partition*; and the rule is thus simple: when a distribution has been made by a father, a share must be given to sons procreated though not born previously thereto; but sons begotten afterwards shall only take the exclusive property of their father: such are the two maxims. But, according to your opinion, the estate of the paternal grandfather should be divided

after the mother becomes too aged to bear more sons ; this is one rule : the father's own property may be divided at any time by his pleasure ; this is a second maxim : sons born after partition shall take their father's *reserved share of his own estate*, and receive, even from their brothers, a portion of the property left by the paternal grandfather ; these constitute four * maxims. There is consequently one more rule than in the exposition of CHANDÉS-
WARA. *This should not be objected* ; for the precept concerning the succession of a son born after partition to the *several* estate of his father, would be irrelevant, since a child cannot be procreated on a woman after she has ceased to menstruate. It should not be answered, that the texts of VISHNU and YÁJNYAWALCYA would thus also become irrelevant. They are pertinent, since a son born of a pregnancy not manifest *at the time of partition*, claims *a share of the estate of his paternal grandfather*.

According to the interpretation of JÍMÚTAVÁHANA and the rest, there is no poverty of meaning in the texts, but the rules are numerous. According to the opinion of CHANDÉS-
WARA, the precepts (CI, &c.) relate to the case of a partition made by mistake, or to that of a son born of a marriage subsequent thereto. Although the father's passion was extinct *when the division was made*, it is recorded by ancient authors, that desire has, *in many instances*, been revived by potent drugs or the like. This and other inferences may be trusted. Such are the distinctions ; and more on this subject may be established by *a simple exertion of intellect*.

SECT. II.—On the Share of a Parcener living abroad, and returning after Partition.

CCCXCIV.

VRĪHASPATI :—Whether a partition be or be not made,

* So the manuscript ; but the number should be three. T.

- made, whenever an heir appears, and the property descended to parceners, he shall receive his share :
2. Be it debt, or a written contract, or a house, or arable land, that descended from his grandfather, he shall take his due share of it when he comes, even though he had been very long in a foreign country.
 3. If a man leave his joint family, and reside in another province, his share must undoubtedly be given to his male descendants when they appear :
 4. Be he the third person, or the fifth, or even the seventh, *that is, in the second, or fourth, or even in the sixth degree*, he shall receive the share that gradually descends to him, on full proof of his birth and family-name.
 5. To the descendants, when they appear, of that man whom the neighbours long settled on all sides know by successive tradition to have been the proprietor, his kinsmen shall give possession of the land.

If one son of the common ancestor go to a foreign country, and he and his offspring stay there, but the posterity of the other sons remain at home divided or undivided, then, should the descendants of him who went to a foreign country return, the rest shall give them a share *of the heritage*. In such a case, the form of distribution is this : one share, computed according to the number of sons left by the common ancestor, shall be received by the descendants of him who went to a foreign country, and be distributed amongst them in right of their respective fathers ; but if they return after partition, the rest must contribute their due allotments out of their own several shares.

“ And the property descended to parceners :” what is liable to partition, not wealth acquired by any one of the coheirs through his own exertions, shall be shared. “ Debt ;” meaning indiscriminately money lent and sums borrowed by their own ancestors.

“ A writ-

“ A written contract ;” the patent for a corrody or the like.
 “ If a man leave his joint-family,” (or the joint-property of the family,) not abandoning it, but making no claim thereon, his share of the debts, and other things above mentioned, must be given to his male descendants. Such is the interpretation of BHAVADÉVA; but RAGHUNANDANA holds, that a share of any joint-property must be given. In effect both opinions are right ; for gems and the like acquired by ancestors can hardly remain after a long time, *but have probably been dissipated*. “ Be he the third person,” or grandson of the common ancestor : or “ the fifth,” that is, the son of the great-grandson ; mentioned because he is the fountain whence proceeds the stream of disqualified persons : “ or even the seventh ;” mentioned to close the sense, *and exclude a remoter descendant* ; for the eighth is not entitled to participation.

It should be here remarked, that the right of the fifth or remoter descendant supposes his father, or great-grandfather, or other predecessor, to have been living when the common ancestor died, for otherwise he would have no claim (CCCLXX). Does it not follow, that the eighth or remoter descendant would also have *such* a right in the case of his ancestors having died successively, the son after the father ? No ; for, although such a claim be possible, his property is divested by the adverse possession of another ; and the text of the legislator *excepts him*. Since the law (Book I, v. CXIII) expresses, that “ he who sees his land possessed by a stranger for twenty years, without asserting his own right, loses his property therein,” it is thus ordained, that persons who see *adverse possession* alone forfeit *their title* ; does it not follow, that men who have gone to a foreign country do not lose *their property* ? Persons who see *adverse possession* forfeit *their title* after the lapse of a very long period, for relinquishment is thus inferred ; if he do not abandon it, why does he not claim and recover it ? Accordingly, RAGHUNANDANA, commenting on the text of VYÁSA (CCCXCV), observes, this precept, relating to usucaption in the absence of the proprietor, does not contradict the texts relating to adverse possession during twenty years in the presence of the owner.

CCCXCV.

VYĀSA :—Occupancy during twenty years, unmolested by the owner, is *considered as* possession of land during one generation ; twice as much during two :

2. Thrice as much during three ; and, in this instance, proof of a fair title is not required.

This possession during three generations divests the property of persons unallied *to the occupant* ; but it does not annul the rights of those who are related to him within the degree of a *śapinda*. Hence, on the return of parceners, down to the seventh in descent from the common forefather, they obtain *shares* of the property inherited from the paternal ancestor. VRĪHASPATI expressly declares it :

CCCXCVI.

VRĪHASPATI :—A possession by strangers for three generations, gives, no doubt, an absolute title ; not a possession by kinsmen within the degree of *śapindas* :

2. The property of a house, arable land, a market, or other immoveables, which are possessed by a friend, or a near kinsman in the male or female line, who is not the proprietor, shall not be lost *to the rightful owner* :
3. Nor shall the husbands of daughters, nor learned priests, nor the king, nor his ministers, acquire a title even by a very long and quiet possession.

Relation within the degree of a *śapinda* here signifies that in which impurity is caused by the death of a kinsman, and which extends to the seventh person, *or sixth degree of ascent or descent*. By “ kinsmen ” are meant those who sprung from the same family :

family: this has been already mentioned, and is subsequently repeated. In the second verse, one term signifies *kinsmen in the female line*, as a daughter's or a sister's son and the like; the other signifies *kinsmen in the male line*, including the seventh in descent from the common ancestor; for the word is so employed in a text of BAUDHÁYANA (CCCXCVII). In the third verse, the first term signifies a daughter's husband.

DÉVALA describes a learned priest (Book II, Chap. ii, V. 20); he who studies one *śác'há* of the *Véda*, either singly, or with that body of learning derived from the *Véda*, which is called *calpa*, or the law of sacrifice; or one *śác'há*, with the six bodies of learning, grammar and the rest; and who is assiduous in performing the six prescribed acts, that is, who worships the deities, gives something *to the poor* according to his ability, and reads the *Véda*; (these three acts are relative to another world; three *others* are means of subsistence, namely assisting *others* to sacrifice, teaching *them* to read the *Véda*, and accepting the gratuity thereby obtained as well as alms :) a priest, we say, who studies the *Véda*, and does not wilfully neglect the rites enjoined therein, is called *śrōtriya*. Here the study of the *Véda* is the cause; and assiduity in the performance of the six acts consists in the strict observance of its precepts. Accordingly GÓYICHANDRA derives the word *śrōtriya*, signifying "one who reads the scripture," from *ch'handas*, (*scripture or holy verse*,) by substituting the synonymous term *śrōtra* with the suffix *iya*. He who omits the acceptance of gifts, but is endued with the other qualities *above mentioned*, is nevertheless denominated *śrōtriya*. It should not be objected, that assiduity in the performance of the six acts is mentioned to regulate the means of subsistence, not as a condition absolutely required; and consequently he alone is called *śrōtriya* who pursues no other means of subsistence, but assisting others to sacrifice, teaching them to read the *Véda*, and accepting gifts *from a pure-handed giver*. Were it so, a man endued with such qualities, and subsisting by lawful gleaning and gathering, would not be a *śrōtriya*. Accordingly the wise recite,

In right of his birth, he is considered as a *Bráhmaṇa*; in right of investiture and other regenerating ceremonies,

monies, he is called twice-born ; by learning, he attains priesthood : by these three, a *śrōtriya* or learned priest is distinguished.

By these three, namely by birth, by regenerating ceremonies, and by learning, a *śrōtriya* is distinguished ; or priesthood, the characteristick of a *śrōtriya*, consists in these three : consequently a *Brāhmaṇa*, conversant with the *Vēda*, and invested with the mark of his class, is a *śrōtriya*, or learned priest. Such is the definition ; and assiduity in the performance of the six acts is a quality or epithet intended to forbid inferior means of subsistence. Even they who have studied any single part of a *śāc'hā* of the *Vēda*, and are not degraded by following any *irregular* profession at their pleasure, are acknowledged to be *śrōtriyas*, or learned priests. Accordingly MENU, on the subject of Succession to the estate of one who leaves no male issue, ordains, that the property of him who leaves no male offspring shall be given to a priest who has read the three *Vēdas*, and is endowed with virtue consisting in *mental* purity (CCCCXLII) ; and DÉVALA directs the delivery of it to learned priests (CCCCXLV). Consequently, on the concurrent authority of both legislators, from the etymology of the term, and by virtue of ancient traditional maxims, a *Brāhmaṇa*, who has studied any one of the three *Vēdas*, is evidently a *śrōtriya*, or learned priest.

Thus some lawyers expound the law ; but, in fact, whatever be the definition of *śrōtriya*, he who is venerable on account of his reading the *Vēda* or the like, does not acquire a title even by a very long quiet possession : (and this supposes a proprietor different from the king ; but the case of the sovereign being owner is discussed under the title of Duties of Kings.) This we deem reasonable : and the rule for a share to be received even by the seventh person *in descent from the common ancestor* relates to one who resides in a distant country ; in contemplation of this, it is said, *the property of immoveables possessed by a kinsman who is not the owner, is not lost*. The precept of DÉVALA (LXXXI) must be considered as relating to one who resides in the same province. Thus, one son of the common ancestor lived at some place other than his father's house or the like, and enjoyed wealth acquired by himself, and so forth ; his son, having also resided there in a
similar

similar manner, dies ; another son and his issue remained in the house of the common ancestor, and possessed the estate of that forefather : afterwards, when the grandson of him who resided at a different place of abode, claims a share of the estate inherited from ancestors, he shall have it ; but if he die, and his son claim a share, this remote descendant shall not obtain it. Such is the sense of the text of DEVALA. How can the seventh in descent from the common forefather be entitled to the succession ? Because it is the heritage of his near ancestors ; for, although they have not possession, which is another mode of acquisition, they gain a title to that property by birth, under the text of GÓTAMA (Ch. I, Sect. I, Art. I).

Does not the precept (LXXXI) signify, that partition of the whole estate among undivided parceners, or of a small residue among divided coheirs living together or residing in the same province, extends to the fourth in descent from the late owner ? (but second partition is only pertinent as it relates to divided coheirs ; or “ living together ” may signify re-united ;) if a son then, separated from his father, die during the life of that parent, his son and grandson also dying before his father, and if none but a great-grandson of the son exist when the parent subsequently dies, he shall not obtain a share of wealth remaining undivided : it is the same even though coheirs have different abodes after re-union. But as for the opinion that partition extends only to the brother, his son, and the son of that son, even when coheirs, whether undivided or re-united after partition, die successively, *the son after the father* ; and that no partition can exist beyond these with the great grandson of the late owner’s son ; may it not be asked, to whom then would the property belong ? The literal sense of the precept may be offered in reply ; it belongs to the offspring of him who survived when one of two brothers died : but arguments from reasoning are not sought in this case ; for, the several ancestors dying successively, and the property not having been silently neglected during adverse possession, nothing prevents the transmission of it even to the hundredth degree of lineal consanguinity. It should not be affirmed, that this sense is established on the authority of the text. RAGHUNANDANA and the rest have not expressly stated such an interpretation of the law ; and the text may be otherwise expounded. Again ; if two brothers, having gone on a pilgrimage to bathe

bathe at a holy place, die unknown to the rest, then, since it is undetermined who deceased first, and who last, both their great-grandsons, though undivided parceners, would be deprived of their shares, because they are more remote from the proprietor than the fourth in descent.

Does proprietor signify the acquirer of the wealth, or simply the owner of it? If it bear the first *sense*, two uterine brothers could not divide wealth descending from ancestors, which was acquired by the great-grandfather of the grandfather; for they are more remote from the original acquirer than the fourth in descent. It should not be argued, that the precept relates to the case where no partition has been made from the time when the acquirer lived *to the present moment*. The sense of the text does not extend so far. It should not be replied, such an inference may be drawn from the use of the term "parceners" in the plural number. Still nothing would prevent partition with anyone male descendant when property, which has been *regularly* divided by *the heirs during* four generations following the acquirer, is held in coparcenary by the fourth in descent from the fourth person, provided the demise was regular *in each generation, the father dying before the son*.

If it be said, the second meaning must be admitted; and the sense in effect is, that if partition have not been made among any owners during three successive generations, a division shall not be made in the fourth: the answer is, "fourth in descent" must be referred to some origin; but this text would be unintelligible, since it is difficult to find the source to which that term refers; for, if the meaning be 'fourth in descent from the owner of the property,' then, since undivided parceners also have common ownership, partition may extend to the hundredth descendant, provided demise were regular, for he is not more remote than the third in descent from an owner of it. If it be said, the term is referred to a sole proprietor of the wealth, then, in the case of coparcenary during five successive generations, it would become a waif, although demise were regular in each degree; or it would be taken by the person who should be heir on failure of male issue. If it be said, the property devolves on the issue of him who died last of two brothers, the answer is, No; for he was not sole owner independent of his nephew. It should not be said, the determinate
sense

sense is fourth in descent from a sole owner and common ancestor. There are no grounds for such an inference. Thus some expound the law ; but this should be examined.

Others hold, that the right of parceners residing in a foreign country extends to the seventh person, even though demise have been irregular in three generations ; and this appears from the remark of RAGHUNANDANA, after citing the text of CĀTYĀYANA (LXXIX), ‘ this relates to parceners living together.’ That opinion is not satisfactory ; for it is established generally, that a son, a son’s son, whose own father is dead, and a son’s grandson, whose father and grandfather are dead, succeed to the estate of the proprietor ; a different rule in regard to persons residing abroad is not established. It should not be answered, the right of persons residing in a foreign country extends to the seventh in descent, under the text of VRĪHASPATI (CCCXCIV 4). The implied sense of that precept denies the forfeiture of property unpossessed by coheirs residing in a foreign country. But the rights of parceners remaining in their own country are forfeited by dispossession beyond the fourth in descent, under the text of DÉVALA (LXXXII). It should not be objected, that the law declares the right of inheritance to extend to the fourth person. There is no argument on which that sense can be also rejected. It should not be urged, that, as the property of strangers is divested by want of possession, so are the rights of near kinsmen also forfeited by dispossession during sixty years ; but, since a text declares the right of inheritance of parceners residing in a foreign country to extend to the seventh person, it is of course true, that their title is not lost even though they have not had possession during sixty years. VRĪHASPATI specially ordains, that the rights of kinsmen shall not be forfeited by want of occupancy (CCCXCVI 1). Does it not follow, from the text of VRĪHASPATI, that the property of kinsmen is not forfeited, even though unpossessed during a hundred generations ? This law is so explained by CHANDÉSWARA and the rest : after expounding a text of DÉVALA, CHANDÉSWARA, citing a precept (LXXXII) with the word “ so ” premised, proves it to be a law of DÉVALA : it would therefore be a vain repetition of the preceding text (LXXXI) ; and it would be troublesome to establish different causes of property in wealth inherited from ancestors, on a distinction between
between

between the offspring of one who resided in his own, and of one who lived in a foreign country. It should not be objected, 'since thou dost establish dispossession to be a cause of forfeiture, it is equally troublesome to prove different causes thereof on a distinction between persons residing in their own and in a foreign country.' Forfeiture is not an immediate consequence of dispossession *during a certain period*. Does it then become a mediate cause of forfeiture? Silent neglect annuls a title, and dispossession proves that *neglect*. Accordingly the property in an *as'watt'ha* tree or the like, acquired by the party himself, is not forfeited, even though it be unoccupied during a long period.

The law may be thus briefly recapitulated: a son, a grandson, and a great-grandson, succeed to the estate of a father, of a paternal grandfather, and of a paternal great-grandfather, on their decease; if coheirs, residing in their own country, take not their shares during three generations, the right is lost to their descendants; but it is lost to the posterity of coheirs residing in a foreign country, if the seventh in descent claim not *the share*.

If a kinsman possess the several property of another, related to him within the degree of a *śapinda*, and three generations of owners do not claim it, what shall be the consequence? Some lawyers reply, the title is not lost: for VRĪHASPATI declares generally, that wealth, joint or several, possessed by kinsmen, is not lost *to the rightful owner*: however, the claim on undivided property is forfeited in the case of silent neglect during three generations; as appears from the word "succession, or partition," in a text above cited (LXXXII).

A son, a son's son, and the son of that grandson, not the son of this great-grandson, succeed to the estate of a proprietor; if then the son, his son, and the son's son, die during the life of the owner, and leave a son of that great-grandson, afterwards, when the proprietor dies, his wife succeeds to the estate, although a son of a great-grandson exist: but if the owner decease while the great-grandson is living, and this heir subsequently die, the estate devolves on his son, in right of the property vested in him. Such in effect is the meaning. Consequently, if the son of a grandson go to a foreign country, after the son, and son's son, have deceased during the life of the proprietor, and if no intelligence be received of his health, then, the owner afterwards dying, the son

of the great-grandson, presuming his father's death when twelve years have elapsed *without receiving news* of the absent person, has performed his obsequies: *now* the son of the proprietor's daughter, who resided in another province, learning the death of his own maternal grandfather, and the presumed decease of the great-grandson of that ancestor, comes and claims the estate of his maternal grandfather; and the son of the great-grandson also claims it as the patrimony of his father: what is the rule of decision on this litigated question? The title either of the daughter's son, or of the great-grandson, on the death of the proprietor, is a matter of doubt; because the right of her son is not ascertained without proof of the great-grandson's prior demise; and the title of this heir is not ascertained without evidence of his being then alive *when the proprietor deceased*. It should not be answered, the right of the daughter's son must be adjudged, because the certainty of the great-grandson's title could alone debar him; but in this case no such certainty exists. It is simpler to admit the great-grandson's title as of course debarring the daughter's son, *though not certainly known*; for there is no argument to prove that the positive knowledge of it is required. It should not be said, the want of any ground of choice, on other constructions, is alone a sufficient argument in this case. Were it so, the succession of the daughter's son taking place on the *supposed* certainty of the great-grandson's demise, this male descendant would have no right *to the inheritance* should he afterwards happen to return; there is no argument on which the right of the daughter's son could be subsequently annulled, and property vested in the great-grandson; and this would become a case of difficulty. Has not the daughter's son a sole right, since the great-grandson has no valid title, under a text cited by RAGHUNANDANA (CCCLXXXIV), because he has not possessed the estate? If the great-grandson die on the day immediately following the demise of the proprietor, his son would in this case also have no title to the succession.

On this subject it is said, since the text expresses "property which a man has accepted unmolested by another," acceptance alone justifies a title; hence, even without possession, if he do accept it, the estate becomes the property of the great-grandson, and afterwards devolves on his son: and this is reasonable; *for,*

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as neglect annuls a fair title, and bars an incomplete one, so does acceptance justify an imperfect title. Accordingly, the great-grandson gains a right to an *aswatt'ha* tree or the like acquired by his paternal great-grandfather. Thus, if the great-grandson, being afflicted by disease, and insensible at the time of his great-grandfather's demise, do not accept the estate, and die immediately afterwards, the exclusion of his son is acknowledged, for the great-grandson is then dead. In like manner, exclusion is also admitted, if he be then afflicted with present insanity in a high degree. But, according to the opinion of those who assert the title of the great-grandson in right of birth alone, under a text above cited (Chap. I, Sect. I. Art I.), his son may in this case succeed to the estate. This should not be affirmed; for, if the great-grandson die during the life of the proprietor, to exclude the son of that descendant, it must still be affirmed that acceptance without possession taken by an owner is requisite*.

Thus some lawyers expound the law: but that is wrong; for, a doubt still remains unsolved, whether the heir, who resided abroad, being then alive, and any-how learning the demise of his paternal great-grandfather, did or did not accept the succession. As for what is argued, that a fair title is not gained without acceptance, that is also wrong; for, acceptance is only mentioned as it disproves silent neglect. Accordingly the heir, discovering, after ten or fifteen years, a chattel appertaining to his father, but unknown at the time of that parent's demise, may justly take it. Others hold, that, in consequence of doubt, the son of the great-grandson, and the son of the daughter, shall of course take equal shares.

MENU declares the right of succession to extend to the great-grandson (CCCLXX). To three, to the father, the paternal grandfather, and great-grandfather, water must be given in the form of an oblation; for three, for the father and the rest, is the funeral cake ordained in the double set of oblations; the fourth in descent is the giver of funeral cakes and water to them, namely, to the father and the rest: (the text must be so supplied.) A

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precept

* Because the collateral heir, not having a title by birth, must become owner by acceptance, to the exclusion of a remote lineal heir, who claims in right of birth. T.

precept ordaining the gift of funeral cakes being inserted under the title of Succession to Heritage, the benefit conferred *on ancestors* by descendants, down to the great-grandson, is exhibited as the ground on which they inherit the estate. The succession of a son and grandson born in lawful wedlock is declared by a text *formerly cited* (XI).

Again; if there be the son of a son born in lawful wedlock, and a son adopted through donation, *then*, no son of the body or other superior claimant being left, the son given has a title as ordained by law, and the son's son has the same claim with his father; and if male issue born in lawful wedlock, and the son of a son given, survive, that grandson shall take the same allotment with such an adopted son, under the text of CATYÁYANA (LXXIX 2). That a son given, being deficient in virtue, shall not take the estate of the paternal grandfather, is an exception to be deduced from a text *formerly cited* CXC 2). At present, the son of a wife legally appointed, and other inferior sons, succeed to the estate of a paternal grandfather, or other ancestor, who leaves no surviving male issue: to show this, the legislator propounds the text (CCCLXX). It is therefore proper that sons, improperly so called, should succeed to the estate of a paternal grandfather leaving no surviving male progeny; and it is declared by an express law (XI), that the son of a son born in lawful wedlock shall share the estate of a paternal grandfather, who outlived his male offspring; for the text is so expounded by CULÚCABHATTA. Consequently, as "son," *signifying male issue*, includes the great-grandson, so "father" (CXC 2) includes the paternal great-grandfather. Such is his meaning.

If the son given possess little, and his son possess much virtue, what is the rule of adjustment? In fact, the good qualities of him who actually takes a share, should alone be considered; as in the case of a blind son, *whose offspring, being virtuous, shall take the heritage*. At present, a third part is allotted to a son given, without inquiring his good or bad qualities; the same should also be allotted to his male issue, *if he be dead*.

CCCXCVII.

BAUDHÁYANA: — The paternal great-grandfather
and

and grandfather, the father, the man himself, his uterine brother by a woman of equal class *with the father*, his son, his son's son, and the son of that grandson; all these, partaking of undivided oblations, Sages pronounce *sapindas*, or near kinsmen allied by funeral cakes; those who share divided oblations, they call *śaculyas*, or distant kinsmen allied by family: male issue by males being left, the estate of the father surely must go to them; on failure of *sapindas*, the spiritual teacher, the pupil, or the priest *usually* employed at sacrifices, shall take the estate; on failure of them, the king.

“Partaking of undivided oblations,” (*avibhaṅga dāyāda*,) here bears various senses. That which is offered (*dīyatē*) is an oblation (*dāya*); meaning the funeral cake. They who eat that, which is an undivided offering, are persons partaking of common oblations. By the word “undivided” is signified the eating of the funeral cake together. He who becomes an eater of a funeral cake with another, is (*dāyāda*) an eater of the oblation presented to him: this is a settled rule. Thus the great-grandson tastes a funeral cake with his father, paternal grandfather, and great-grandfather, at his own *sapindana* (or first annual obsequies) performed by his own son: the great-grandson is therefore a *sapinda*; but the son and grandson certainly are so: in like manner three ancestors, the father and the rest, are also *sapindas*. But JÍMÚTAVÁHANA likewise says, a son, a son's son, and son's grandson, are *sapindas*, because the funeral cake is offered by them. Consequently, they who well (*ā*) present (*dadati*) a common oblation (*dāya*) or funeral cake, are persons offering undivided oblations (*avibhaṅga dāyāda*). By the word “undivided,” the funeral cake of the double set is suggested. Again; uterine brothers, presenting undivided oblations, will offer a funeral cake to undivided, *that is, to the same*, manes. Consequently, a man likewise offers a funeral cake to those *manes* to whom his uterine brothers also present such oblations.

“Undivided” alludes to the persons to whom the funeral cake is offered. He who gives one to them, who likewise receive such offerings from another person, is (*dâyâda*) his fellow in the presenting of oblations. Such in effect is the meaning. Again; they who eat the undivided oblation of a man, that is, the funeral cake in the double set offered by him, are his *sapindas*. Thus the father, the paternal grandfather, and great-grandfather, are so denominated.

Would not a brother by a different mother, a paternal uncle, his son, grandson, and others, be likewise *sapindas*? *The answer is*, what difficulty follows? Uterine brothers are mentioned in the text to exhibit a portion of the subject. Would not the son of a daughter likewise be a *sapinda*? There is no difficulty, his relation by the funeral cake not being such as gives *him* a title to take the heritage.

Or the term *avibhaçta dâyaâda* may be explained in a single sense: for they taste an undivided oblation; and three ancestors, the father and the rest, eat an undivided funeral cake with three descendants, the son and the rest, at the *sapindana* or first annual obsequies: and “undivided,” as an epithet of oblation, signifies that it is to be eaten by manes, who *also* taste an oblation to be partly eaten by *the proposed person* himself. Other descendants of the paternal great-grandfather are thus comprehended in the same term; and the mention of “uterine brothers” suggests this interpretation. That expression of BAUDHÂYANA is indefinite; it is employed to announce what is of course true in the chief instance. If the paternal great-grandfather was degraded, the descendants of his father are thereby excluded: and in like manner, the son of a daughter and others may be excepted. There is no difficulty if a daughter, whether married or unmarried, be not considered as a *sapinda*; for she may inherit her father’s estate on the sole authority of a *special* law.

“By a mother of equal class:” this is merely intended to declare pre-eminence. “Those who share divided oblations:” this is the converse of the former term. He who only eats a funeral cake at a double set of oblations not offered by a certain person, he who offers not a funeral cake to those manes who receive one from that person, he who does not eat a funeral cake with another, or he who offers not a funeral cake to another,
is

is his distant kinsman sharing divided *or separate* oblations: *the one* eats a divided offering, that is, an oblation different from that which is presented by the person in question; *another* is divided *or separate*, that is, he eats not a funeral cake with that person; *a third* gives a divided funeral cake, that is, he offers one, in the double set, to be received by other manes; *a fourth* presents a funeral cake to other manes than those who receive such offerings from the proposed person. Here division, like partition of property, must be understood as signifying secondarily the separation or disjunction of persons to whom funeral cakes are offered.

“Male issue by males being left:” among the *sapindas* mentioned, issue of the body being left, the estate, that is, the heritage, shall go to them. The plural number being employed, many descendants of the person proposed are understood in this phrase. The co-ordinate right of a son, a son’s son, and a son’s grandson, is thereby suggested; but the grandson, or other descendant, whose own father is living, is debarred by the concurrent text of CĀTYĀYANA. That is not right; for, were it so, the son of a daughter would also have a co-ordinate title with a son (*since he also is issue of the body*). The title of a son, grandson, and great-grandson in the male line is therefore suggested by this text; and their co-ordinate rights are deduced from the text of CĀTYĀYANA. Or the funeral cake to be offered by the son of a daughter, and other descendants *in the female line*, to a maternal grandfather or remoter ancestor, is secondary, as it accompanies the oblations which the father and other ancestors of the male line receive: the son of a daughter is not therefore equal to a son *of the body*; hence he has no co-ordinate title to take the heritage.

On failure of male issue by males, kinsmen within the degree of a *sapinda* have a right to the inheritance; and on failure of *sapindas*, a distant kinsman or *śaculya*: this is evident from the text, and shall be subsequently considered.

The nearness or proximity of kinsmen is a requisite condition under the text of MENU (CCCCXXXIV): consequently, he who is nearer of kin to the proprietor, in comparison with another, shall alone take the inheritance, to the exclusion of that remoter kinsman; or he who is nearer of kin to the late proprietor than any *other* living claimant, shall take the estate left by him: does it not follow, that the grandson, whose own father is dead, has not

a present title, since he is more distant than the surviving son? The answer is, this text relates only to the claims of *sapindas*: a son's son has a right of succession merely as he is the *perpetuated body of his ancestor*: and he *really* did spring from the person of his grandfather; for a text expresses "the bodies of ancestors are born again of her" (CXCVII). Although the legislator, having declared three, the son and the rest, to be *sapindas* (CCCLXX), seems to ordain the succession of him among them who is nearest of kin (CCCCXXXIV); and *although* this text do not allude to the *sapindas* described by BAUDHÁYANA (for it is propounded by a different Sage); still the following rule of decision must be established, to reconcile it with the texts of BAUDHÁYANA and CÁTYÁYANA: he among *sapindas*, (meaning those who are noticed by the same legislator, namely the son, grandson, and great-grandson in the male line,) who is nearer of kin than any other living claimant, shall take the estate; but the grandson, whose father is dead, is not more distant than his surviving uncle, for he belongs to another line of descent. Thus some expound the law. But CULLÚCABHATTA holds that this text would be superfluous, if it solely related to such *sapindas* as are *lineal* descendants born in lawful wedlock and the like; it must be therefore intended to authorise the succession of a wife and others not mentioned *by the legislator*: to the nearest *sapinda*, male or female, the estate of the deceased shall belong. Here that term intends such as have been mentioned by BAUDHÁYANA; and a wife must be considered as a *sapinda*, because she assists *her husband* in the performance of religious duties.

CHAP. VIII.

ON

COLLATERAL SUCCESSION.

SECT. I.—*On Succession to the Estate of a Housekeeper leaving no Male Issue.*

I. A SON, a son's son, and the son of a grandson, have a fair title to the estate of a *deceased* proprietor, *although the grandson and great-grandson be more distant than the surviving father or paternal grandfather of the late proprietor* : but who shares the heritage on failure of them ? In reply to this question, the texts of YÁJNYAWALCYA and others are cited.

CCCXCVIII.

YÁJNYAWALCYA : — A wife, daughters, both parents, brothers, their sons, kinsmen sprung from the same original stock, distant kindred, a pupil and a fellow student in theology ;

2. On failure of the first of these, the next in order shares the estate of him who has gone to heaven leaving no male issue : this law extends to all classes.

“ Leaving no male issue ;” leaving no son, grandson, or great-grandson in the male line capable of inheriting. JÍMÚTAVÁ-
HANA,

HANA, RAGHUNANDANA, and the rest, deliver nearly the same exposition. In the first place, the wife is heir to the estate of such a deceased proprietor : that is the meaning ; and VRĪHASPATI also declares it.

CCCXCIX.

VRĪHASPATI :—In scripture, in law, in *sacred* ordinances, in popular usage, a wife is declared by the wife to be half the body *of her husband*, equally sharing the fruit of pure and impure acts :

2. Of him whose wife is not deceased, half the body survives ; how should another take the property while half the body *of the owner* lives ?
3. Although distant kinsmen, although his father and mother, although uterine brothers, be living, the wife of him who dies leaving no male issue shall succeed to his share :
4. *Since she was* previously espoused in due form, she must support the consecrated fire ; and after the death of her husband, the widow, faithful to her lord, shall take his wealth : this is a primeval law.
5. Taking his effects moveable and immoveable, the precious and base metals, the grain, liquids, and clothes, let her cause the several *śrāddhas* to be offered in each month, in the sixth, and at the close of the year :
6. With food consecrated to the gods and the manes, let her honour paternal uncles, spiritual parents, daughter's sons, the offspring of her husband's sisters, and his maternal uncles, learned men, unprotected persons, guests, and females of the family.

In the *Vēda*, in codes of law, in *sacred* ordinances, the wife
is

is pronounced one person with her husband ; both are considered as one. So likewise in popular usage, that is, in the practice of men, a thing being delivered to the wife, it is a valid gift to the husband ; and a thing being received from her, it is a valid receipt from him : in these and many other instances the practice occurs. “ Equally sharing the fruit of pure and impure acts ;” *equally interested* in maintaining the consecrated hearth and the like, and in acts justified by the nuptial fire. Such is the explanation given by authors. “ Although his father and mother and near kinsmen be living :” this is *merely* illustrative, comprehending daughters and the rest. “ Leaving no male issue ;” leaving no great-grandson or other nearer descendant in the male line : such is the sense.

If the wife be half the body of her husband, may she not exclusively take his wealth, although sons or other male descendants be *living* ? No ; for it appears from *the words of* SANC’HA and LIC’HITA, “ the bodies of his ancestors are born again of her, let him figuratively address his own soul in the person of his child” (CXC VII), that a son or other male descendant is consubstantial with the father or other ancestor.

“ Let her perform the *śrāddhas* in each month, and in the sixth, and so forth :” the text should be so supplied. The double set of oblations must not be offered, because women are forbidden to perform this rite : consequently, the *śrāddha*, and honour shown to paternal uncles and the like, being mentioned under the title of Inheritance, she is only competent to the performance of those rites which are specified. But CHANDÉSWARA remarks, ‘ some hold, that a woman may offer the double set of oblations ; to forbid that, the legislator enumerates the *śrāddhas*, “ in each month, in the sixth, and so forth.” By the word “ month” are suggested the *śrāddhas* offered in twelve *successive* months ; by the term “ sixth” are suggested two *śrāddhas* celebrated in the sixth month, *one* before the expiration of it, *the other performed as usual* ; the term “ and so forth” includes the first annual obsequies, and the anniversary *śrāddha* to be performed yearly : hence she must celebrate no other obsequies ; else those *other śrāddhas* must be authorized by other texts ; and this precept would be unmeaning.’

Since a double set of oblations is offered in the first annual obsequies, RAGHUNANDANA and the rest hold, that the performance

of this rite by a woman must be deduced from a special text, expressing, that the first annual obsequies by *sapindas*, and the anniversary *s'râdd'has*, may also be performed by a woman*.

“ Learned men, unprotected persons, guests, and *females of the family* ;” the first term signifies versed in science, for it is exhibited in the Dictionary of AMERA among the Synonyma of learned. “ Females of the family ;” the widows of her husband’s sons, and the rest. Daughters of her husband’s sisters, if destitute of protectors, are included under the term “ unprotected persons :” the support of them is only necessary if they be so circumstanced. Consequently, all this should if possible be done at the charge of her husband’s estate ; otherwise (*if the funds be inadequate*), it must be done in words only : it is not necessary that she should deprive herself of the means of subsistence, to support the uncles and other relations of her husband ; nor should she, for that purpose, do what is unauthorized by the law. But her husband’s father and mother, being old, must be maintained, even though the utmost distress ensue : for her husband was authorized by a text of MENU (Chap. VI, Sect. II, Art. I.) to use irregular means for the support of his father and mother, and the rest.

On this some remark, the practice of this country goes farther ; but, however intelligent he may be, a man cannot contemplate *every possible case*. Some *Brâhmanas* spring from a dignified race ; those who give daughters in marriage to them, are exalted with their own lineage ; if they do not dispose of their daughters to such persons, reverence is withdrawn : these *Brâhmanas* accept damsels in marriage from many families, but neither maintain those wives nor their offspring. Such being the notorious practice, if her husband have died after giving a daughter in marriage

* Sixteen *s'râddhas* must be performed for a *Brâhmana* recently deceased. The first on the day immediately following the period of mourning ; twelve monthly oblations ; one additional *s'râddha* before the expiration of the sixth month ; another before the expiration of the year ; and lastly, the *sapindana*, or first annual obsequies, performed on the anniversary of his death. Thenceforward, obsequies should be annually celebrated for an ancestor on the date of his death, besides monthly *s'râddhas* and other ceremonies directed by MENU in the third chapter of his Institutes. See MENU, Ch. III, v. 247. In *Mir'bilâ*, and some other provinces, the obsequies for a *Brâhmana* recently deceased are abridged, and by a fiction completed on the second day after mourning. T.

riage to a man sprung from a noble family, and that daughter, though virtuous, be not supported by her own husband, (for, according to general practice, he is only bound *to support his wife*, if his father-in-law, with the generosity of his ancestors, allot food and apparel to that wife, and, means permitting, *give* land or the like for her future maintenance;) that daughter must, if possible, be supported by her mother: else, how shall she subsist like an unprotected person, although she have a protector? This very practice is also proper in respect of the daughter of her father-in-law; for the dignity of her husband was raised by such act of her father-in-law (*bestowing his daughter on a man of noble birth*). The grand-daughter in the female line must, if possible, be likewise maintained; for she also is such *as is a daughter*; and persons of noble birth must give their female children in marriage to men born of noble families. This practice, founded on the rank established by the mighty prince BALLÁLA SÉNA, has been adopted by great personages. Though not found in codes of law, it is noticed *in this place* to explain the *subsisting* practice. It should be examined by the auspicious *learned*. Hence, either these women must be comprehended under the term “females of the family;” or else the usage of contracting numerous marriages must be discontinued.

Consequently, she whose husband is deceased should support, in proportion to her ability, the same persons, and do the same acts, in the same manner in which her husband, when living, supported those persons, and did those acts. But it is not absolutely necessary that she should fulfil the same voluntary offices which her husband did, such as supporting *Bráhmanas* resident in the *same* town and the like. This is deduced from the term “unprotected persons.” The inference is also the same when any other succeeds *to the estate of the deceased*.

Others deduce from the expression “honour with food consecrated to the gods and the manes,” that pious offerings are alone positively directed; hence occasional presents of food and apparel and the like are suggested, not a *settled* maintenance: and this is reasonable; for, Sages have not, *by anticipation*, composed books in conformity with the present practice.

JÍMÚTAVÁHANA, too, after saying “the widow should give the uncles of her husband *sufficient funds*, in proportion to the estate,

estate, for his obsequies and for other ceremonies,' adds, this is suggested by the term "food consecrated to the manes;" (for so the word is explained in the Dictionary of AMERA.) By "paternal-uncles" are meant the *śapindas* of her husband; by "daughter's sons," the offspring of his daughter; by "sister's sons," the children of his sisters; by "maternal uncles," the family of his mother. To these, and to others standing in a similar relation, she should give it; not, while these exist, to the relatives of *her* father; for the text (CCCXCIX 6) would be unmeaning: but, with their assent, she may give as much as she pleases to the kinsmen of her own father and mother. NĀREDA declares it (Book IV, v. XIII).

With food consecrated to the gods and the manes, a widow must show due honour to the sons of her husband's daughters, to his paternal uncles, and the rest. Thus she ought not to bestow presents on the family of her own father, without honouring with gifts the family of her husband. For the sake of this explanatory repetition the text (CCCXCIX 6) is propounded.

But others expound the precept of NĀREDA (Book IV. v. XIII) as signifying, that the *nearest kinsman in the family* of her husband has authority in the disposal of property, that is, in donation. She may give a present to that person on whom the kinsman of her husband bids her confer one; she may bestow that which he bids her give away. The person who receives the present is considered as receiving it from her husband; for she is dependent on her lord *even after his decease*. "With food consecrated, &c." (CCCXCIX 6); with victuals sacred to the manes, that is, with a *śrāddha* after death; and with maintenance, that is, with food and the like during life: conformably to the literal sense of the verb *pri*, cherish and fill. But some lawyers expound the same phrase, 'honour the paternal uncles of her husband and the rest, at (*cavya*) the rites sacred to progenitors, and at (*pūrta*) the rites sacred to the gods.'

UDAYACARA explains "faithful to her lord" (CCCXCIX 4), firm in the rigid duties of a faithful widow. The definition of such a woman is delivered by HĀRĪTA (Book IV, v. CVII): suffering pain when her lord endures it, that is, affected in mind by similar anguish; cheerful when he is so, affected by joy proceeding from his gladness; in his absence, pining under the anguish

guish of separation, and squalid through neglect of ornaments and dress; who dies when he expires, that is, follows him in death: the woman who does so, such a virtuous woman, *we say*, diverting her mind from impure desires, such as lust for other men and the like, must be considered as *truly* faithful to her lord. Consequently, since she cannot herself offer the monthly *śrāddhas* and the rest, if she follow her husband in death, the causal form of expression in the phrase “cause to be offered,” is pertinent.

She who is owner of the thing to be offered must command the *śrāddha* to be given: the Sage acknowledges her to be the proprietor of the whole estate so long as she lives. Other texts must be also expounded in a similar manner. Such is the opinion of this commentator. But that is not admitted by CHANDÉSWARA and the rest; for, blameless widows, endowed with every quality but *this* of the strictest fidelity to their lords, (*which implies their burning with the corpse*,) would have no title of *succession*. That the text of CĀTYĀYANA (CCCCCLXXVII 2) would be nearly irrelevant, is an objection to that interpretation. The remark in the *Retnācara* is therefore just, that rigid conduct *here* signifies the strictest rule prescribed to widows *who choose to survive their husbands*.

If the woman be already invested with the estate, her enjoyment of it is of course legal: and it is therefore superfluous to say “let her enjoy it;” for there can be no *divine* command enjoining that which is already deduced from a secular maxim. Neither can a positive precept, that she must indispensably enjoy it, be conveyed *by this text*; for it would establish a moral consequence, and she would be guilty of a spiritual offence if she should happen not to enjoy it. Consequently the enumeration of rites is here an explanatory precept; the construction therefore is, she shall do nothing but enjoy the estate of her lord, *that is, the wealth* of no other. It must not be questioned, whether the care of property, and the like, be not thus prohibited. A rule conveys an exception of that which is similar, *but not identical*; and an explanatory repetition also is a special rule: but a preceptive one, which is different from an explanatory repetition, is nearly technical, or founded on acceptance. Hence the inference, that a widow shall not make a gift or other alienation of her husband’s wealth devolving on her *by the failure of male issue*. Accordingly JIMŪ-

TAVÁHANA remarks, a widow shall only enjoy the estate; she ought not to give it away, mortgage, or sell it. It appears from the term “ought not,” that, if she do so, the act is valid: but the giver shall be amerced for bestowing that which ought not to be aliened, as is directed by the text of NÁREDA (Book II, Ch. IV, v. LXVII).

RAGHUNANDANA acknowledges, that, for the purpose of raising her husband to a region of bliss, a wife may give away property left by him, and devolving on her *by the failure of male issue*. Hence it is understood, that she ought not to do so for any other purpose. VÁCHESPATI BHATTÁCHÁRYA has delivered the same exposition. BHAVADÉVA also concurs nearly in the same opinion. It is said in the *Viváda Chintámeni*, ‘as women are declared by positive texts to be incapable of giving away or otherwise aliening immoveable property bestowed on them by their husbands, so are they incapable of aliening the landed estate of their lords.’ Wealth given by a husband *here* signifies that which has been conferred by him on his wife to be her absolute property, as explained by NÁREDA (XVI). A woman has independent power to give away or otherwise alienate moveable effects given to her by her husband, but not immoveable property. So the *Viváda Chintámeni*. It appears from this declared incapacity and dependence, that the donation is void, being made by a person incompetent, and not independent. Accordingly a woman is pronounced subject to the controul of *the nearest kinsman* on her husband’s side, in respect of gift, which is an alienation; *as appears* from the term “authority” in the text of NÁREDA (Book IV, v. XIII). Modern lawyers do not concede to this opinion; for the validity of a gift made by the owner should not be impugned while no special text pronounces it void. As for the declared subjection of women to the controul of *the nearest kinsman*, when deprived of husband and son, it does not thence appear that the gift made by her is void; for the implied object of *the text* is only to show sin in not subjecting herself to *the controul of kinsmen* on the husband’s side; and it coincides with a text of the *Mahábhárata*, signifying, that women ought not to waste the property of their lords (CCCCII). Accordingly wealth is given away by a woman for the sake of raising her husband to a region of bliss. As a text formerly cited (Book II, Chap. IV, v. XIV) shows, that
immoveable

immoveable property ought not to be given away without the assent of sons, not that the donation is impracticable : so should the same be also established in the present instance ; for the same reasoning is equally apposite.

It is argued, that the text of the *Mahābhārata*, and that of CĀTYĀYANA (CCCCII and CCCCLXXVII 2), declaring *present* enjoyment to be the only fruit *derived by a woman from her wealth*, forbid the transfer of *such* property to another ; whence it fully appears, that her disposal of it at pleasure, otherwise than by the *simple* use of it, or by donation for the benefit of her lord, as authorised by *another* text (CCCCI), is invalid. It should not be asked, why is it not said the wife shares only food and apparel, but the brothers or other heirs have the ownership ? Were it so, they might immediately give or sell it. Nor should it be affirmed that the gift is not void ; because wealth devolving on the wife, *by the failure of male issue*, is not enumerated among things of which the donation is null, in treating of Subtraction of Gift. Not being enumerated among those which ought not to be given, it would fall into the class of things which may be aliened. Is it suggested, by texts belonging to that title, that this *property* may not be given, or that the gift is void ? On this point there is no ground of preference.

But that argument is wrong ; for “ may enjoy,” a term employed in the form of an explanatory precept, fully shows that a woman should do no other act but simply enjoy the property : whence it follows, that she ought not to give it away, nor otherwise dispose of it. In the case of an explanatory precept, it does not appear that a different act is void. Were it so, it would follow, from the maxim “ eat *certain* five-toed animals,” that the act of eating five-toed animals, other than the porcupine and the rest of five *such creatures which may be lawfully eaten*, is null. Nor is that admissible ; for it does *sometimes* happen, that human flesh, or that of monkeys and the like, is inadvertently swallowed, and both consequences of appeasing hunger and nourishing the eater do actually follow. No reasoning being offered against the validity of the gift, when the paternal estate inherited on failure of nearer heirs is given away by a daughter, in preference to whom a wife would have succeeded, it does not seem congruous that a gift should be null which is made by a wife who succeeds

succeeds in preference to a daughter, and who is declared by sacred ordinances to be half the body of her lord, and who expends property of her husband during his life. It should not be answered, 'you yourselves must admit the inferiority of the wife compared with the daughter; for you do not prohibit the donation of the paternal estate by a daughter to whom it has descended, but you forbid the alienation of her husband's estate by a wife on whom this has devolved.' Although a daughter be permitted to make a donation, the inferiority of a wife compared with her is not thereby suggested; for a widow should live in *the practice of austerities with extinguished passions, refraining from pleasurable food, bed, and other gratifications, which she may desire, because she ought to devote herself, being as it were the property of her husband, to his sole service.* In like manner, she must not dispose of other property of her lord, unless for his benefit; she ought to observe the rigid duty of carefully preserving it. This also is a duty strictly incumbent on her, not to appropriate the wealth of her lord to civil purposes, any more than consecrated property. A gift or other alienation made by the wife is therefore valid, *though blameable*: however, the king, informed by the heirs, should duly punish her, not the acceptor of that donation; for no law authorizes his punishment. Such is the rule of decision established by modern opinions. But the text of NÁREDA (Book II, Ch. iv, V. lxvii) is authority for chastising a widow *who alienates such property.*

If nothing ought to be given by a wife, may she, or may she not, give money to the king by way of fine when she has committed a sin deserving pecuniary punishment? She must necessarily pay the fine by way of atonement: the prohibition relates to *gifts and payments, other than such as are positively ordained.* In like manner, if unable to undergo abstinence or other penance, she must give a milch cow or the like; and gifts or other alienations must be made for the sake of *attaining the region of bliss.*

CCCC.

VYÁSA:--After the death of her husband, rigidly practising the austerities of a student in theology, the

the widow should, after bathing, daily present water to *the manes of* her husband from the hollow of both hands *joined* :

2. Day after day let her perform with humility the worship of deities ; and, constantly fasting *at appointed times*, adore VISHNU :

3. Let her give presents to the chief of priests, that *her* purity may be augmented ; and observe the forms of austerity prescribed by law.

4. A woman, ever assiduous in her duty, *thus* redeems both her husband abiding in another world, and herself, O beauteous female !

She should present water from the hollow of both hands, in the form of an oblation. The worship of VISHNU must be performed on the twelfth lunar day ; she must fast on the eleventh. By the word “ constantly,” it is suggested that this should never be omitted *on the appointed days*.

CCCCI.

Smṛiti, cited in the *Dāyabhāga tatva* and *Madana pārijāta* : — Whatever is most desirable in this world, whatever most delighted her husband, that must be given to some virtuous man by a widow anxious to gratify her lord.

No other gift or alienation ought to be made : so in the

CCCCII.

Mahābhārata ; — Simple enjoyment is declared to be the fruit which women gather from the heritage of their lords ; on no account should they waste the estate of their husbands.

On this JÍMÚTAVÁHANA remarks, enjoyment might also consist in the wear of delicate apparel and the like; but such use only is approved which is requisite for the welfare of her body, because she confers a benefit on her lord by the preservation of her person. In like manner, gift or other alienation for his obsequies is approved. Accordingly the legislator says, women should not waste the estate of their husbands; and the dissipation of it consists in expences not necessary for the owner of the estate. Hence, if she cannot otherwise subsist, hypothecation is permitted; if she cannot even thus maintain herself, sale is also permitted; for reason shows no distinction.

“Afterwards, the legal heirs shall take it” (CCCCLXXVII 2); the meaning is, ‘after her they shall obtain it.’ Heirs are those persons whom the law permits to take the effects in right of affinity or relation. In answer to the question, whose effects? the wife being readily offered as the nearest term *in the sentence*, does it not follow that a sister’s son and the rest, who are legal heirs of the wife’s exclusive property, shall take the estate? No; for, were it so, their succession being established of course, this precept would be superfluous. It should not be answered, that the text (DXIII) relates to wealth technically called the peculiar property of women: hence an estate inherited on failure of nearer heirs is not included *in that law*; and this precept is therefore pertinent, as it declares the succession to inherited effects. That text (DXIII) is not naturally restricted to the property of women technically so called; *this maxim is therefore propounded to limit that law*. Consequently, he who would have immediately succeeded, were she then proved not to be living, shall alone succeed when she dies after a title has been *intermediately* vested in her. This rule, which has the sanction of RAGHUNANDANA, JÍMÚTAVÁHANA, and the rest, should be respected.

But the authors of the *Retnácara* and *Viváda Chintámeni* contend, that a wife cannot give away the immoveable property of her husband, which has devolved on her by the failure of male issue: but she may give away moveable effects; they expound the text of CÁTYÁYANA (CCCCLXXVII 2) as relating to the personal estate of her husband, which has devolved on her.

That is liable to objection: for, the text is expounded by JÍMÚTAVÁHANA as relating to the peculiar property of a
woman

woman given her by her husband : and their exposition is improper, because the text contains the words “ after the death of her husband ;” else, since his estate cannot devolve on his wife unless he be dead, it would be superfluous to say, “ after the death of her husband.”

VÁCHESPATI BHATTÁCHÁRYA explains this law as relating to ornamental apparel or the like given by her husband, and worn by the wife unforbidden by him : that also is the exclusive property of the woman, under the text of MENU and VISHNU (CCCCLXXVIII). ‘ Ornamental apparel, though not given by her lord, but worn with his assent, is in so much only the exclusive property of a wife :’ so the *Mēdhātī’hi*. Herein the *Vivāda Chintāmeni* also concurs ; and hence she may dispose at pleasure of such ornamental apparel after the death of her lord. But what must she do while he is living ? This question is answered by the last hemistich of the text of CĀTYĀYANA, “ as long as he lives let her preserve it ” (CCCCLXXII 2) : consequently, her ornamental apparel must not be given away while he is living ; since it was not spontaneously bestowed by her husband, it must be established, that she has not independent power over it, as over other sorts of property possessed exclusively by women. This commentator so explains the text : he reads the letter *ē* joined to *csh* in the last measure of the verse (*cshēpayēt tat culē’ nyathā*), and thus expounds that reading : if she dispose of it, she must bestow it on his family and no other. Hence also it follows, that moveables received on the death of her husband must not be aliened at pleasure.

Among authors attributing various meanings to the text of a legislator, is it not improper to reject the opinion of an ancient lest that of a modern one be contradicted ? It should not be argued, that it is proper to set aside the opinion maintained by authors of other provinces, (for these commentators belong to the *Mait’hila* school,) in favour of one maintained by an author of our own country. They are sometimes cited as authority by our own countrymen. The established rule of another province is deemed fit by virtuous men of the present day.

The text is thus expounded in the *Vivāda Retnācara* and other works : in respect of a wife, the estate of her husband is of two sorts ; wealth devolving on her by the death of her husband, and

that which is held by her as property during his life, in right of her alliance with him, under the text which declares property common to the married pair. Wealth devolving on her *by his death* is again of two sorts, moveable and immoveable: the personal estate of her husband, which has descended to her, she may dispose of at pleasure under the text above quoted (CCCCLXXVII 1); but wealth received during his life at her marriage, on account of her alliance with her husband, she must preserve *so long as he lives*. Supposing his death, where must it then be placed by the wife? In reply to that question, the legislator propounds the law concerning the immoveable estate of a deceased husband: she must go (*cshapayêt*) to his family, meaning to that of her lord; otherwise, that is, on failure of his family, she may enjoy it living with her spiritual parents, namely, her own father and the rest. It should not be argued, that this text properly relates to the gifts of affectionate kindred, as supposed by HELÁYUDHA and the *Párijáta*, because it is delivered under that head. Were it so, the question, what must be done with the estate of her lord devolving on her? would not be satisfied; the other exposition is therefore proper, in consequence of that question: and authors acknowledge, that an *interpretation, which resolves a doubtful and unsatisfied question, should be preferred to one which accords with the context, and with the subject treated in the place where the text may have been propounded, but which leaves the question unanswered*.

The inference is denied; for, expounding with VÁCHESPATI BHATTÁCHÁRYA the first verse (CCCCLXXVII 2) as relating to the gift of affectionate kindred, and the second verse (CCCCLXXVII 2) as relating to the estate of her lord which has devolved on her, digression is thus avoided, and the question is satisfied.

But other lawyers thus explain the texts of CÁTYÁYANA (CCCCLXXV 3, and CCCCLXXVII 1 and 2); having received "such a gift from affectionate kindred," that is, wealth presented through natural affection by her own father and kinsmen, or by her father-in-law and the rest, she has absolute exclusive dominion over it; hence she may at pleasure give, sell, or otherwise aliene it. But, in respect of wealth given by her husband, there is a distinction: during his life she must preserve

it;

it ; after his death she may act as she pleases ; but if she be incapable of guarding it herself, she must commit it to his family. By this declared exception, she has not absolute dominion during the life of her husband over wealth given by him, though she have such power over other gifts from affectionate kindred. Or, *otherwise expounding the texts*, a gift from affectionate kindred is threefold : one presented *to a woman* by her own father and the rest ; ornamental apparel or the like worn with the assent of her husband, though not given by him ; and, *lastly*, immoveables bestowed on her by her husband. Concerning the first sort, namely, property moveable or immoveable given her by her own parent, by her father-in-law and so forth, and concerning moveables bestowed on her by her husband, the legislator propounds the first verse (CCCCLXXV 3). Concerning the second sort, namely, ornamental apparel and the like worn by her with the mere consent of her husband, he propounds the second verse CCCCLXXVII 1). After the death of her lord, she is permitted to dispose of this at pleasure ; what must be done while he lives ? To this question the legislator replies, “ let her preserve it.” If she cannot herself guard it, what must she do ? To this question he *also* replies, she must commit it to his family, that is, to the offspring of her husband, and so forth, not to her husband himself ; for, since it was not given by him, it cannot be supposed that he may take it : the meaning therefore is this ; a woman shall not aliene such effects, even though she wish to give them away, because she cannot herself preserve them. The alienation of immoveables given her by her husband is forbidden by NAREDA (CCCCLXXVI) ; what then must be done by a woman in regard to such immoveables ? On this *question* the legislator propounds the third verse (CCCCLXXVII) : a supposed occasion of enjoyment arises from the term childless ; but a widow who has a son cannot properly use the estate, because she is supported by him. Since NAREDA ordains the resumption of the exclusive property of disloyal women (CCCCV), this legislator adds, “ preserving inviolate the bed of her lord ;” and since that is most arduous, he further says, “ strictly obedient to her spiritual parents,” that is, to the father of her husband and so forth, or, on failure of such *guardians*, to her own father and the rest. *The widow* may enjoy that estate with frugality ; she must

not be prodigally expensive: such is the meaning. She may consequently use it to support life, but not to wear delicate apparel or the like. "Until she die;" from this explanation of enjoyment it follows, that donation is prohibited. On whom shall that estate devolve after the death of the widow? The legislator replies, "the legal heirs shall take it;" that is, the heirs of the peculiar property of the woman: this is a repetition intended to satisfy a doubtful question. Or the legal prohibition of giving away immoveables received from a husband, although they become the property of the woman, prevents their descent to any other than the heir of her husband; after the death of the widow, his heirs shall therefore take the estate: and this interpretation has not been noticed by CHANDÉSWARA and the rest, nor by JÍMUTAVÁHANA and his followers. But it is inserted in this place, because it is irregular to consider as a repetition what may be explained as an original precept; and a question does arise whether immoveables received from a husband, which CÁTYÁYANA, when treating of the exclusive property of a woman received from affectionate kindred, forbids her to alienate, shall or shall not descend after her death to other heirs than those of her husband.

If immoveables, though voluntarily given by her husband, cannot be alienated by the wife, she cannot of course give away immoveable property devolving on her, and of which she becomes the true owner: admitting, therefore, that the landed estate of her husband, which has devolved on the wife by failure of issue male, ought not to be given away, on whom shall such her estate (not alienated, but long preserved by her,) devolve when she dies, after *carefully* preserving the inherited immoveables of her lord? The answer is, since the law shows the claim of a woman's heirs to be restricted to that which is technically called her exclusive property, they are legally incapable of this succession: the claim of her husband's heir, suggested by the tenor of the subject, is therefore established; and he whose title would have been proved, if she had not been living, has the right of *succession* after her death. This method is followed by JÍMUTAVÁHANA in the case of a daughter. It should be here remarked, that although some acknowledge the husband's right to that which his wife has gained by *painting, and other arts or the like*, still, since she is principally

principally considered in the instance of such wealth, it should be taken by her heirs; it is the same on the opinion of those who do not acknowledge any claim of the husband on such property. How can the heirs of a woman, who are declared to be successors to that only which is technically called her exclusive property, have a right to take this inheritance? As the heirs of her lord succeed to what chiefly belongs to him, so her own heirs claim what appertains chiefly to the wife: in the silence of the law this is a reasonable maxim. Thus do these authors explain the rule, grounding their interpretation of it on the opinions of HELÁYUDHA and the *Párijāta*.

This exposition follows all authorities in forbidding the alienation of immoveables devolving on a woman by the death of her husband, and in affirming the succession of his heir to such immoveables: it follows the *Vivāda Retnācara* and *Vivāda Chintāmeni*, in permitting a woman to give or sell at pleasure the moveable effects of her husband devolving on her *by failure of issue male*; it follows the obvious sense of the text in admitting his heirs to succeed, after the death of the wife, to immoveables given by her husband; and on this point the interpretation of VÁCHESPATI BHATTÁCHÁRYA surpasses that delivered in the *Vivāda Retnācara* and *Vivāda Chintāmeni*. According to the *Retnācara* and the rest, the moveable effects of her husband, which had devolved on the wife, go after her death to her own heirs; for the text above cited (CCCCCLXXVII 2) relates only to immoveable property. This must be acknowledged *by those authors*.

Texts of legislators, which contradict the universal succession of the wife to the estate of him who leaves no male issue, are *now* cited, that they may be expounded.

CCCCIII.

SANC'HA, LIC'HITA, and PAIT'HÍNASI:—The effects of him who dies leaving no male issue go to his brother; on failure of him, let both the parents take it, or the eldest wife; *after these*, a kinsman bearing
ing

ing the same family name, a pupil, and, *lastly*, a fellow student in theology.

First, the property goes to a brother; next, to both parents. Here an alternative is mentioned in respect of the wife; 'or the shall inherit, *that is*, on failure of both parents.' So

CCCCIV.

DÉVALA :— Next uterine brothers shall divide among themselves the heritage of one who leaves no male issue; or daughters, who have an equal claim to it; or the father, if he survive his son :

2. *On failure of them*, brothers equal in class, a mother, and a wife, succeed in order.

Here brothers equal in class, but born of different mothers, are meant. Another order of succession is thus propounded; for the daughter is mentioned after the whole brother; and a half brother on failure of the father.

CCCCV.

NÁREDA :— Among brethren, if any one die naturally or civilly, and leave no issue, the rest may divide his property among themselves, excepting the wealth of his wives :

2. And shall support them until they die, provided they preserve unfulled the bed of their husband; but from other widows the heirs may resume their exclusive property*.

The legislator thus demonstrates the succession of the wife, in some instances, when the king does not take the estate (CCCCXLVIII 2).

* The Verse inserted at ccccxlviii 2 was also cited in this place immediately after V. ccccv 2. T.

(CCCCXLVIII 2). So VASISHT'HA also intimates, that the estate of him who leaves no male issue goes to his brother, although his wife survive, if it be impossible that she should bear children (CXVII). Here the expression "until they bear sons" (CXVII), relates to widows left pregnant: thus MISRA. But others hold, that this rule, which supposes a share to be set apart, even if it be possible that she should bear a son procreated by a kinsman, belongs to other ages: a reason is thereby assigned why the widow shall not now inherit if brothers be living.

The succession of the brother, though a wife survive, and of the wife, though a brother survive, has been propounded by various legislators: hence a contradiction *arises*. It should not be argued, that they who ordain the succession of the brother in preference to the wife, direct a maintenance for the widow; hence texts which suggest her right must intend by implication the allotment of a maintenance, for thus the precepts mutually coincide. It is expressly declared, that a wife has a right to the whole property left by her husband (CCCCVIII).

CCCCVI.

MENU:—If brethren, once divided and living again together as parceners, make a second partition, the shares must in that case be equal; and the first-born shall have no right of deduction.

2. Should the eldest or youngest of several brothers be deprived of his share *by a civil death on his entrance into the fourth order*, or should any one of them die, his *vested interest in a share* shall not wholly be lost;
3. But, *if he leave neither son, nor wife, nor daughter, nor father, nor mother*, his uterine brothers and sisters, and such brothers as were re-united after separation, shall assemble and divide his share equally.

BALARÚPA observes, 'under these texts of MENU, if brethren,
after

after a first partition, live again together as parceners on a *mutual* agreement in this form, “ that property which is thine is also mine,” and *subsequently* make a second partition, no additional portion shall be given to the first-born. Should any one of them be deprived of his share by his entrance into the fourth order or the like, or by natural death, it shall not be lost ; but his single share shall be computed and received in due proportions by his uterine brothers, even though not re-united, and by his half-brothers who were re-united with him ; and a fourth part must be given for their nuptials to *such of* his uterine sisters who had not already received a quarter of a share for that purpose : and this allotment of a fourth part to a sister must be understood in the case where the former distribution was made according to the number of mothers, each of whom had born a son and a daughter. Such being the sense, brethren re-united after separation having thus recovered the right of inheritance (CCCCXXVI), claim the estate of him who leaves no male issue, in preference to the widow ; but she would succeed to the estate of one who left no male issue, and who was not re-united *with his brethren.*’

That is not acknowledged by JÍMÚTAVÁHANA ; for the text of VRĪHASPATI, expressed nearly in the same terms with that of MENU, shows that a brother, even though re-united, has no claim if the wife survive ; and JÍMÚTAVÁHANA states many other objections, which are here omitted to avoid prolixity ; for his purpose is attained by a single *valid* objection.

CCCCVII.

VRĪHASPATI :—If brothers who have made a partition become, through mutual affection, re-united, and *again* make a division of their joint-property, the first-born has no right to a larger portion.

2. Should any one of them die, or any-how seclude himself from the world, his share shall not be lost, but devolve on his uterine brother ;

3. But she who is his sister is next entitled to take
the

the share: this law concerns him who leaves no issue, nor wife, nor father, *nor mother*.

CULLÚCABHATTA also remarks on this text of MENU concerning a re-united brother, 'this must be considered as the rule, if he leave neither son, nor wife, nor father, nor mother.' But VÁCHESPATI MISRA affirms, that all texts which suggest the succession of brothers in preference to the wife relate to the estate of an undivided brother, and the texts cited which suggest her succession in preference to them relate to the estate of a husband who has made a partition with his brothers; for, if he die before the distribution, it cannot be affirmed, "this was the property of her husband," since all the brethren are joint owners of that wealth: the widow therefore can have no title. It should not be argued, that she may claim partition with the brothers of her husband, and take his share. A distribution among brethren being permitted after the death of both their parents, an express law shows, that a brother, his son, grandson, and the rest shall receive shares (LXXIX); but no law declares that the wife *of a deceased brother shall in that case* take an allotment. Nor should it be argued, that texts which propound the right of the widow establish her participation, since they cannot be otherwise pertinent. These texts may also relate to the inheritance of divided property, and may therefore be otherwise applied. Accordingly VASISHT'HA has declared, that the widow of a childless brother may hold a share until she bear a son (CXVII). In fact, that allotment belongs to the *posthumous* son alone; but, if none be born, that share shall be received by, and distributed among, the brothers. Such is the meaning; for the words "until they bear sons," would be otherwise unmeaning.

This again does not appear satisfactory; for the participation of the widow is deduced from the word "share" in the text of *Vṛiddha* MENU. That term is not used in speaking of succession to an estate which has been already divided, for it carries a reference to some entire property; and when this *share* is now inherited, there is no total *of which it is part*.

CCCCVIII.

Vṛiddha MENU :—A widow who has no male issue, who keeps the bed of her lord inviolate, and who strictly performs the duties of widowhood, shall alone offer the cake at his obsequies, and succeed to his whole share.

It should not be argued, that this reading (*cr̥tsnam anśam labhēt*) rests on the authority of JĪMŪTAVĀHANA and others: but MISRA and the rest read, succeed to his whole estate (*cr̥tsnam art'ham labhēt*); and hence, according to this *last* reading, it does not appear that a widow shall participate *with coheirs*. It is evident from the text of VRĪHASPATI (CCCCXCIX 3), that she shall participate. JĪMŪTAVĀHANA explains the term which occurs in that text, (*sanābhi*), as signifying uterine *brothers*. It is derived in the apposition called *bahubrihi*, and intends those who were borne in the same womb (*nābhi*). In this text the word “with” must be understood; and the third case, governed by that particle, signifies “at the same time,” as in the example, “the lioness sleeps fearless with her single cub; the female ass bears her burden with her ten colts* :” the sense of the text is, “although uterine brothers be living, the wife of him who died leaving no male issue shall succeed to his share;” that is, shall inherit the allotment of her deceased lord. Accordingly, the following mode of reconciling *the apparent contradiction* must be also rejected: “the text above cited (CCCCXCVIII) should be expounded as signifying that brothers by different mothers shall divide the estate among themselves; and consequently uterine brothers have a claim before the widow, but half-brothers after her:” *it must be rejected*, because the text of VRĪHASPATI shows the right of the widow *to inherit*, although an uterine brother exist: and this is reasonable; for, since the devesture of her husband's property, together with his leaving no male issue, is a general cause which vests property in the widow when divided wealth

* The quotation was partial. I cite the verse at large from the ethical treatise of CHA'NACYA MISRA. T.

wealth is considered ; there is no obstacle to prevent its vesting in her, even though the wealth be undivided, or be held by reunited parceners. The limitation of divided property is there improper, because it would be troublesome *to prove*, and no law ordains it. But these texts are nevertheless pertinent. This is also held by JÍMÚTAVÁHANA and the rest.

CHANDÉSWARA, finding in the text of *Vṛidd'ha* MENU (CCCCVIII) the words “ who strictly performs the duties of widowhood,” and deeming it irregular to treat that as a superfluous term which may be explained as an *indispensable* condition, affirms, that a wife who does so is alone preferred to a daughter, to a brother, and the rest ; and she who does not strictly perform the duties of widowhood, *though* not guilty of adultery, shall be merely maintained by her husband's brother and kinsmen, under the text of HÁRÍTA : but an adulteress shall be banished from the house, conformably with the precept of NÁREDA (CCCCV 2).

CCCCIX.

HÁRÍTA :—A woman, widowed and young, is untractable ; but separate property must always be given to women, that they may pass their destined life.

Succession to heritage, in right of good qualities only, does actually occur in the case of adopted sons. Since a woman has not yet performed the duties of widowhood and the like, how can she have a title to the inheritance immediately after *the* death of *her husband* ? She has an immediate title, because she is disposed to perform those duties ; but afterwards, if her propensities happen to change, she forfeits the right which she had fully possessed. “ Young ” is mentioned in the text of HÁRÍTA, as indicating the possibility of adultery. By youth, *that* age is not strictly meant ; for any woman, though young, who is known to be well disposed, has the right of inheritance by universal consent. By the term “ untractable ” is suggested the neglect of the duties of widowhood. They consist in refraining from the leaf of betel, from unction, from eating off vessels of zinc (Book IV, v. CXXXIV),

v. CXXXIV), and from sleeping on a bed (CXXXV), and so forth, and in strict abstinence on the eleventh lunar day, and in other acts of mortification.

CCCCX.

PAI'T'HÍNASI :—The effects of him who leaves no male issue go to his brother; on failure of brothers, his father and mother shall take *the heritage*, or his wife not distinguished by good qualities, his distant kinsman bearing the same family name, his pupil, or a fellow-student in theology.

The wife not eldest, that is, *not senior by her virtue, or, in other words*, not distinguished by good qualities, is heiress on failure of the father and mother; such is the sense of the text: and that concerns wealth acquired by the man himself without using the property of his fire. The claim of a brother is prior to that of a father or mother, because he is first entitled to perform obsequies *for the deceased*. Brothers of the whole and half blood succeed in order according to the benefits conferred by them; but, although they are conferred in unequal degrees among whole brothers by an elder and by a younger one, still, since there is no difference in the degree of benefit arising from the funeral cake offered by them in the double set of oblations, they do not succeed in order, but inherit jointly. The reason is this: an heir being sought for the estate of one who has left no male issue, his brothers and his parents being proposed, both claims seem equal; (for these confer benefits by sharing the funeral cake offered in the double set of oblations, and by giving birth to him; and his brothers do so by presenting the single and double sets of oblations, which he was bound to offer, and by performing his obsequies :) admitting, therefore, the greater weight of rites relative to another world, his brothers shall inherit, like sons and the rest, before his father; but his half-brothers succeed after those of the whole blood, because they are not qualified to offer the *párvana* for his mother. Among uterine brothers, although an elder one be not competent to perform the obsequies of the deceased,

ceased, if a younger brother exist, they have a joint title, because age and qualities are not considered in *the* claims to *this* inheritance: else the same rule would exist in the succession of sons; for the eldest performs the obsequies of his father. This should also be understood in the case of half-brothers. The order in which a father and mother claim succession shall be explained hereafter; and that order must be observed in this instance. But if the property were acquired with supplies received from the father and the rest, the claim of parents precedes even that of a brother, as ordained by YÁJNYAWALCYA; because the benefit of aiding the acquisition of wealth is greater *than any other*; and because they are related *in the first degree* without an interval.

On failure of these, “the wife not distinguished by good qualities *shall inherit*” (CCCX). By this epithet, and under the text of YÁJNYAWALCYA (CCCXCVIII), she who performs all the prescribed duties of widowhood claims the succession before a brother.

The expression “leaving no male issue,” signifies ‘leaving none male or female,’ the last term being understood. It consequently signifies ‘leaving no son, nor virtuous wife, nor daughter.’ In like manner, since the daughter’s son precedes a brother in offering the funeral cake in the double set of oblations; since he performs the obsequies of the deceased, in preference to the collateral kindred; and since the text of VRĪHASPATI propounds his title, the brother can only claim the succession after the daughter’s son.

CCCCXI.

VRĪHASPATI: — As she (the daughter) becomes owner of her father’s estate, although kinsmen be living; so likewise her son is acknowledged to be the heir of the estate left by his mother and maternal grandfather.

Consequently, the virtuous wife has the first claim to the wealth acquired by her husband, who has left no male issue; next, the daughter; after her, the son of a daughter; in default of him,

the uterine brother ; on failure of such, one by a different mother ; after these, the son of a whole brother ; next, the son of a half-brother ; on failure of them, the mother ; if she be dead, the father ; if both be deceased, the wife possessing few good qualities : but a mere maintenance shall be given by the heir to a widow wholly destitute of virtue : on failure of a wife possessing few good qualities, the succession devolves on distant kindred and the rest. The order in which daughters succeed may be seen under the proper head ; and the authority on which a brother's son takes the heritage will also be found in its place.

This order of succession being established in the case of wealth acquired by a man himself, the very same sequence should be followed in the case of wealth acquired with supplies received from the father and the rest. *However*, the reversed order of father and brother, founded on the distinction of *various* sorts of property, should not in that case be adopted ; but the order of succession propounded by YÁJNYAWALCYA and the rest must in such an instance be followed, if the wealth were acquired with supplies received from the father and the rest : since a wife possessing few good qualities is not then considered as conferring any benefits, the order should not in that case be broken *to interpose her between the father and brother*. In whatever text it is ordained that a mere competency for subsistence shall be given to the wife, it must be understood of one devoid of good qualities. A wife possessing little virtue must likewise be supported by brothers and the rest ; for the proprietor was bound to maintain her. As for the text of SANC'HA, it must be considered as apposite, when a father or brother takes the estate of his son or brother. In the precept of DÉVALA (CCCCIV), order signifies the sequence which is of general notoriety ; and that is found in the texts of VISHNU and the rest. CHANDÉSWARA thus expounds the law.

CCCCXII.

SANC'HA :—To the childless wives of brothers and of sons, strictly observing the conduct prescribed, their

their spiritual parent must allot mere food and old garments which are not tattered.

But some add, by way of supplement to the opinion of CHANDÉSWARA, that food and apparel must be given, under the text of SANC'HA, to the childless widow of a son or brother by her father-in-law, her brother-in-law, and the rest, who take the estate of her deceased lord: and such nearly is the practice as observed by certain persons. Thus he who takes the estate of another must give food to his widow and the rest, whether she be daughter-in-law or sister-in-law *of the heir*. If he cannot supply her maintenance, he must not take the estate of the deceased, so long as such a widow survive. But the allotment of food and apparel to both these widows is not always indispensable; for they are not enumerated in the text of MENU (Ch. VI, Sec. II, Art. I,) *among persons who must be maintained at all events*. However, they should, if possible, be supported; for, since VRĪHASPATI, treating of the Succession of Widows (CCCXCIX), directs that she who is first, by the text of MENU, in the order of succession to the estate of him who leaves no male issue, shall honour learned and unprotected persons and the rest, the same ought likewise to be established in the case of another heir.

This opinion of CHANDÉSWARA is strictly conformable with the *letter of the law*, but it contradicts the opinion of JÍMÚTAVÁHANA. On this head, the last-mentioned author affirms, that the wife has a prior right before brothers and the rest to the property of him who leaves no male issue; for the texts of YÁJNYAWALCYA and VISHNU (CCCXCVIII and CCCCXVIII) intend that order of succession. But the word "women," in the text above cited (CCCCV 3), relates to females other than the *legal* wife of the deceased: and these are never entitled to the whole estate of one who leaves no son; for it is forbidden to distribute wealth "among women, ignorant men, or such as neglect their duties;" and no special law ordains their succession, as *it does* the inheritance of a wife and the rest. But a woman *legally* espoused, a daughter, and the rest, do inherit, by a special law, the estate of him who leaves no male issue; for they are not barred by the general precept.

CCCCXIII.

Wealth was conferred for the sake of defraying sacrifices; therefore distribute it among honest persons, not among women, ignorant men, or such as neglect their duties*.

Accordingly the king, who succeeds, on failure of all heirs, to the estate of any man except a *Bráhmaṇa*, must maintain the wife of the late proprietor, as ordained by NÁREDA (CCCCV 3); for, in speaking of a legal wife, the eldest is meant. The seniority of wives is not regulated by age or good qualities, but by class (Book IV, v. XLVI). In ages other than the *Cali*, marriages were contracted in various tribes, and sometimes with women of the four classes; in such a case, that wife, among three or four, who was equal in class with her husband, had precedence. Such is the order of seniority by class. If a *Bráhmaṇa* have not espoused a *Bráhmaṇi* woman, may not a *Cshatriyá*, or, on failure of her, a *Vais'yá*, be his eldest wife? Therefore does the legislator add, “to all such married men, the wives of the same class only” (not wives of a different class by any means) must perform the “duty of personal attendance, and the daily business relating to” “acts of religion” (Book IV, v. XLVII).

CCCCXIV.

MENU:—For he who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially considered as a mere *Chandála* begotten on a *Bráhmaṇi*.

But it is consequently admitted, that, on failure of wives equal in class, those duties may be performed by one of another tribe:

however,

* Cited at length in other chapters; but only partially quoted in this place. I insert it here, for a reason which will appear at the end of the first Section of Chapter IX. T.

however, those acts which may be done by his wife, who sprung from a different class, must only be performed by one belonging to the tribe next below him. VISHNU declares it (Book IV, v. XLIX). Hence a *Bráhmaṇi* wife performs those duties for a *Bráhmaṇa*; on failure of her, the *Cśhatrīyā*, in the case of the utmost distress; but not his *Vaiśyā* or *Śūdrā* wives, though actually espoused: such is the opinion of JÍMÚTAVÁHANA. Admitting that *Vaiśyā* and *Śūdrā* women may not assist him in the performance of religious duties, still what can oppose their seniority on failure of other wives superior in class? This is objected by certain authors: still, however, no difficulty ensues; for, if a *Bráhmaṇa* have only espoused women of the commercial and servile tribes, the *Vaiśyā*, but not the *Śūdrā*, may in that case inherit as his wife: but, if women of the four classes have been espoused, the *Cśhatrīyā* and the rest are entitled to maintenance only, because they are not *legal wives** in a strict sense. It should not be objected, that still the obligation on the king to maintain the inferior wives of the proprietor is not apposite, because the *legal* wife alone does in that case inherit the estate. If she be dead, or if the inheritance be refused by her, it may be necessary that *the other wives or concubines* should be maintained by the daughter, brother-in-law, or other heir, or, *lastly*, by the king. This may suffice on the subject of marriages contracted in the four classes; for they are now prohibited. It has been, however, noticed by JÍMÚTAVÁHANA to obviate the seeming contradiction between texts of legislators.

Consequently the wife legally espoused is sole heiress of the estate of her lord, whether separated or undivided, whether reunited or remaining disunited, although a daughter and the rest be living. But “wife” (*bhāryā*), in the text of DÉVALA, signifies legal wife (*patnī*); for it relates to the special case of *the distinguished one*. “Order,” mentioned in that text (CCCCIV), alludes to the sequence propounded by YÁJNYAWALKYA and the rest. In the text of PAIT’HÍNASI (CCCCX), the construction must be taken from remote terms; the eldest wife, or the father or mother, shall take the estate of him who leaves no male issue; on failure of them, it goes to the brother. This precept of law is

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thus

* Throughout this gloss on V. ccccv, *patnī* is employed as signifying the first or legal wife; and *bhāryā*, as signifying any other wife inferior in rank. T.

thus propounded by him. In no text ordaining the allotment of a competent maintenance does the term legal wife (*patní*) occur. RAGHUNANDANA and the rest, following the opinion of HELÁYUDHA and the author of the *Calpateru*, thus reconcile the seeming contradiction. This alone is accurate.

In following the opinion of CHANDÉSWARA, the practice of good men is infringed by admitting the prior claim of a brother ; and that opinion contradicts the text of MENU (CCCCXXXIV). According to the interpretation of JÍMÚTAVÁHANA, if a man die leaving two wives equal in class, the eldest alone has a right to his estate : for, on the concurrent texts of DACSHA and VISHNU (Book IV, v. XLIX and LI), and by the law above cited, the term *legal* "wife" (*patní*) signifies her who was married from a sense of duty.

MADANAPÁLA holds generally, that among wives of all tribes a distribution shall be made as among sons of four classes. He adds, after the death of the woman, on failure of her own daughters and their male issue, the daughter of another wife of her husband shall succeed. Hence it appears to be his opinion, that, after the death of a woman, her heirs shall inherit the property. According to the interpretation of RAGHUNANDANA, JÍMÚTAVÁHANA, MISRA, and CHANDÉSWARA, the heirs of her husband claim the inheritance, a text cited under one title being explained as carrying an allusion to another ; but, according to MADANAPÁLA, the same text being explained as confined to the title under which it is placed, the heirs of the wife take the heritage. This concise exposition may suffice.

On the point above noticed, the opinion of JÍMÚTAVÁHANA cannot be set aside by that of CHANDÉSWARA, because they are equal in merit and defect : but some trifle must be given to disloyal wives. In like manner, it appears, from the condition "strictly performing the duties of widowhood," that a mere competency for subsistence shall be allotted to women, who, though not guilty of adultery, do not strictly perform the duties of widowhood. Since a son devoid of good qualities is declared incapable of inheriting (CCCXIX 3 and 4), surely the same ought to be established if a wife be destitute of virtue : but if she perform some of the duties of widowhood, she has a title to the estate, because she does not wholly fail in observing such duties.

But

But others argue, because the text above cited (CCCCIX) in effect expresses, that a widow devoid of good qualities shall have food and apparel only; and since it is declared by the text of *Vṛiddha* MENU (CCCCVIII), that she only has a title who strictly performs the duties of widowhood; and since VṚIHASPATI, immediately after ordaining the succession of the wife, propounds the several duties to be performed by her, such as obsequies and the like (CCCXCIX); and since a wife confers no benefits on her lord, if she be not virtuous; it follows, that a virtuous widow inherits the estate, but one devoid of good qualities has no claim: the rule is not deduced from the difference of wives equal and unequal in class; for, inferiority of tribe is not expressed in any one text concerning the allotment of a competency for subsistence; and it is reasonable that a wife unequal in class should, in this case also, receive a share, in the same form with partition between the son of a wife equal in class and the son of one belonging to an inferior tribe: however, unequal distribution according to *the class of the women*, and partition of *any sort* between wives of the same husband, have not been noticed by any legislator. What then is the purport of the text of PAIT'HĪNASI (CCCCX); since it would contradict the practice of good men, if the interpretation of CHANDÉSWARA be followed; since it is seemingly inconsistent with the text of MENU; and since there would be no certainty, if remote terms be joined in construction, for the same is also possible in the texts of YÁJNYAWALCYA and the rest? If a woman, whose husband is deceased, raise up two sons to him by appointment of her spiritual parent, and, abandoning them, cohabit with the natural father of those children; in that event, should any of those sons of the wife die leaving no male issue, the text of PAIT'HĪNASI is applicable to the case: and, in that instance, "parents" must be understood to signify the father and mother of his natural mother. A wife not eldest is in every case debarred by a brother and the rest: or else this precept, "the effects of the deceased go to his brother," relates to property acquired with supplies from that kinsman's estate.

According to the opinion of JÍMÚTAVÁHANA, since the wife has an interest in the wealth of her husband during his life (CCCCXV), and since there is nothing to annul her property after his decease, how can her husband's brother and the rest, in

any instance, have a claim to the estate? To this it is answered, No; for it is established that her property is actually lost by the lapse of her husband's right. Accordingly the property of the wife is divested even when the effects are given away by her lord. Those who affirm that the allotment of a share *to the mother*, when partition is made among sons *, is founded on her ownership of the father's estate, because she was his wife, accordingly contend, that a share of the distributed wealth must be allotted to a wife of the father, whether she have or have not a son, and whether partition be made before or after the death of the father. Accordingly BHAVADÉVA remarks, on the succession of a widow, that a wife had a claim on the estate of her lord even during his life, by the texts of DATTA (CCCCXV); and, after his death, she shall have an equal share with her son, by the same authority (CCCCXV 2). Does it not consequently appear, that, according to the opinion of these lawyers, the wife of the proprietor shall receive a share from his brother and the rest, as she would from his son?

CCCCXV.

DATTA:—Wealth is common to the married pair †.

2. After the death of her lord, the mother shall have an equal share with her sons.

To the question thus proposed the answer is, the exigence of such secondary property is supplied by allotting a competency for subsistence; but an equal share is given by sons, because she is, in respect of them, most venerable.

But the property of her husband, devolving on the wife *by the failure of nearer claimants*, descends, after her death, to the legal heirs of her husband, on the concurrent opinion of many authors.

CCCCXVI.

* There has been singular inaccuracy in the quotation of texts concerning the shares of mothers; an important law, here quoted, is unnoticed by the compiler in its proper place.

“The mother of sons, making a partition after the death of their father, shall also take a share.” T.

† I can no-where find the text cited at full length: this much of it has been frequently quoted; but the author of it is here named for the first time, and he does not rank among legislators. T.

CCCCXVI.

VRĪHASPATI :—Those near or distant kinsmen, who, becoming her opponents, injure the property of a woman, let the king chastise with the punishment of a robber.

The widow must defray the education and nuptials of an unmarried daughter. Such is the succession of a wife to the estate of him who leaves no male issue.

II. On failure of her, the estate descends to the daughter, by the text of YAJNYAWALKYA (CCCXCVIII) and rule of VISHNU.

CCCCXVII.

VISHNU :—The wealth of him who leaves no male issue goes to his wife ; on failure of her, to his daughter ; if she be dead, to the son of a daughter ; if there be no such *grandson*, to the father ; in his default, to the mother ; on failure of her, to the brother ; if he be dead, to the brother's sons : in default of these, to the remoter kinsman ; on failure of kindred, to one descended from the original stock ; if there be none such, to the fellow-student ; on failure of him, to the king, except the property of a *Bráhma*na*.

MENU and VRĪHASPATI propound the daughter's claim (CCX and CCXXIV 1); the last-named legislator declares what qualifications are required of a daughter that she may inherit the estate of her father (CCXXIV 2). The order of succession, says BĀLARŪPA, is, in this case, the same which is ordained by the text of PARÁSARA.

CCCCXVIII.

* Partially quoted in this place. There are many various readings of this text.
• I here combine the readings most approved. T.

CCCCXVIII.

PARÁŚARA :—The unmarried daughter shall take the inheritance of the deceased, who left no male issue ; and, on failure of her, the married daughter.

It should not be argued, that all this relates to the daughter who has been appointed to raise up issue for her father ; and that the term “ not appointed,” in the text of **VRĪHASPATI** (CCXXIV 2), relates to her who is selected by an implied intention, without a formal declaration. It is ordained by **MENU**, that, if a son exist, such a daughter shall have an equal share with him.

MISRA.

Consequently a daughter, though not appointed to raise up issue to her father, shall inherit, as appears from the terms “ him who left no male issue.” Are not those terms employed to show that she takes the whole estate of him who leaves no son born in lawful wedlock ; for the texts relating to the succession of a daughter, and of her son, are delivered by **MENU** among precepts relative to an appointed daughter ? Since he has propounded no separate law concerning the claim of a daughter, these texts must be taken as intending by implication the succession of daughters in general. It should not be objected, that their right of inheritance is not ordained by codes of law. The text of **YÁJNYAWALKYA**, expressing “ this rule concerning the heritage of him who has gone to heaven leaving no male issue extends to all classes ” (CCCXCVIII 2), declares the succession of a daughter to the estate of him who leaves no son begotten or adopted, neither one born in lawful wedlock, nor an appointed daughter or the like ; and the text of **VISHNU** conveys the same implied sense. According to the opinion of those who contend that the son of the appointed daughter becomes the adoptive son of her father, there is no difference whatsoever between an appointed daughter and any other female offspring. Neither can the terms “ leaving no male issue,” signify “ leaving no son ‘ properly so called.’ ” Were it so, the wife and the rest would inherit in order, although a son of the wife begotten by a kinsman,

man, or other adoptive son, exist. Nor is that intended by law-givers and commentators. This concise exposition may suffice.

On failure of unmarried daughters, a married one claims the heritage by the text of PARÁŚARA above cited (CCCCXVIII). Such is the notion of JÍMÚTAVÁHANA, and many other authors. CHANDÉSWARA and the rest do not contradict that opinion; it should therefore be adopted. A distinction is admitted in respect of married daughters: she who may possibly have a son, and she who actually has male issue, shall alone take the inheritance, not she who is barren or widowed; for the text of NÁREDA shows, that daughters confer benefits through the means of their offspring; and precepts of MENU, on the subject of Inheritance, declare the conferring of benefits to be the sole ground on which rests a title to take the heritage (CCCLXX and CCCCXXXIV).

CCCCXIX.

NÁREDA:—If there be no son, the daughter *is* *heirefs* by parity of reason; for she keeps up the progeny, *since* a son and a daughter both continue the race of their father.

Here progeny intends such descendants as give the funeral cake; for, he who does not offer it, conferring no benefit, is in nothing different from one who is not a descendant, or who is the offspring of another man. But a daughter's son is a giver of oblations; not his son, nor her daughter; for the funeral cake stops with him. So JÍMÚTAVÁHANA, with whom DÍCSHITA concurs. Consequently, neither a daughter whose son is dead, but who has a son's son, nor she who has female issue, inherit, though they were not barren.

CCCCXX.

DÉVALA:—To unmarried daughters a nuptial portion must be given out of the estate of the father; and his own daughter, lawfully begotten, shall take,

take, like a son, the estate of him who leaves no male issue.

Under this text, the virgin daughter, by a woman equal in class, and legally espoused, can alone claim the inheritance; not a daughter by a woman not legally espoused, nor one of a different class, nor one begotten on the wife by a kinsman, nor any other adoptive daughter; for sons begotten on a wife by a kinsman, and other adoptive sons, being noticed by the law, are alone legal issue; but such daughters being unnoticed in codes of law are not so. The same distinction should be also understood in respect of a married daughter, who would be debarred by an unmarried one.

On this some lawyers remark, since the text of NÁREDA, which propounds *succession in right of* benefits conferred, is not cited by RAGHUNANDANA under the head of Succession of female issue, therefore barren and widowed daughters inherit immediately after those who have or may have sons. This seems to be his opinion. It should not be asked, how can they claim the inheritance, since they confer no benefits? Were this a valid objection, it would contradict the assertion of JÍMÚTAVÁHANA and RAGHUNANDANA, when treating of Succession to the several property of a woman, that barren and widowed daughters succeed on failure of others, because they also are issue *of the mother*. It should not be argued, that they inherit as issue *of the mother*, because a text, treating of Succession to the several property of a woman, expresses, “if a married woman leave no issue, her husband shall take her property.” Since the words “daughters” and “married” occur under this head, both may inherit as married women and as daughters. It should not be objected, that the commentator has not expressly said, that barren and widowed daughters may claim the heritage in this instance, as he has said that they succeed to the several property of their mother; he does not therefore admit the succession of barren and widowed daughters. Neither does he, like JÍMÚTAVÁHANA, affirm, that they do not inherit *in certain cases*; he may have left unnoticed the contrary assertion of a former author, although his own opinion *admits their succession*.

It should not be argued, that benefits conferred through the oblation

oblation of the funeral cake in the *pārvana* constitute the sole ground on which rests the right of succession to the property left by a man, as appears from the text of MENU (CCCCXXXIV) immediately following the precept above cited (CCCLXX); but any benefit whatsoever is sufficient foundation of a title to inherit the several property of a woman. There is no authority for such an inference; and pupils and the rest, though not conferring such benefits, do succeed to the property left by a man. Nor should it be answered, they who afford not such advantages only inherit the estate left by a man, on failure of persons conferring benefits through the oblation of a funeral cake in the *double set*, or *pārvana*: were it so, the succession of a daughter would be contrary to law. Nor should it be argued in reply, that she confers such benefits through the means of her son: were it so, a sister, a father's sister, and the rest, would also claim the heritage. Nor should it be answered, that women, not expressly pronounced *capable of inheritance*, are excluded by a text above cited (CCCCXIII): such a maxim is not infringed by affirming the title of barren daughters and the rest to inherit the peculiar property of a woman, on failure of persons who offer the funeral cake in the double set of oblations; and that maxim is not admitted in the case of property exclusively held by a woman. As a daughter's son, *in this instance*, succeeds before a great-grandson in the male line, so does a daughter inherit in preference to a son's son.

If this inference be proposed, the answer is, that is admissible; the barren and widowed daughters may succeed on failure of heirs, including *distant* kindred, if a precept be found to this purport, "the pupil shall take the inheritance of him who leaves no daughter," like the text above quoted, "the husband shall take the property if the woman leave no issue;" but if *other* female offspring have a *prior* title, and the barren and widowed daughters have no subsequent claim, while a giver of the funeral cake in the double set of oblations exists, they do not succeed on failure of heirs, including distant kindred, since no text shows their title directly or indirectly. Such is the accurate opinion of JÍMÚTAVÁHANA.

Introducing the appointed daughter into this disquisition, JÍMÚTAVÁHANA had variously discussed the subject. Since the appointment

appointment of a daughter *to raise up issue for her father* is now forbidden, the argument is not here inserted for fear of unnecessarily enlarging the book, but it may be thus abridged: if the appointed daughter die having borne no son, her wealth shall be taken by her sister and the rest; but if she die after bearing a son, who deceased, it shall be inherited by her husband and the rest.

After the death of a daughter, by whom shall property which goes to her be taken? To this JÍMÚTAVÁHANA replies, if she was invested with the right while unmarried, and die after a subsequent marriage, it descends, on the failure of her who was invested with the right, to those married daughters and so forth on whom it would have devolved upon the *original* failure of an unmarried daughter never invested with the right: it does not descend to her husband and the rest, for that *succession* relates to the peculiar property of women. The meaning is, since it is shown by a text of law (CCCCCLXXVII 2), that, on failure of a wife invested with the right of *succession*, those heirs of the former owner, who are declared entitled to the inheritance on *the original* failure of a wife never invested with the title, namely, a daughter and the rest, shall succeed to that property; the right of a daughter, and of a daughter's son, who are inferior to a wife, is therefore proved by the rule, *that the greater includes the less*, exemplified by the staff and bread: or wife is an indefinite term intending women in general; the same inference follows.

If they be inferior to a wife, as here affirmed, does it not follow that the heirs of the original owner shall take the property after the death of the daughter's son, or even after the demise of the pupil and the rest? Neither is this consistent with common sense, nor acknowledged by numerous other authors, nor conformable with logical reasoning; for no authentic text ordains it, and the son of a daughter's son ought not to be prevented from taking the estate of his father, *the inheritance of* which falls within the seven lawful means of acquiring wealth. Therefore does the commentator add, "or wife is an indefinite term," &c. Consequently, the making apposite what was not pertinent in respect of wealth devolving on a wife and the rest, is continued in the last part of *the gloss*; apprehending a defect in the former, the commentator reconciles it in the latter exposition.

To this *some* lawyers object the want of proof, that her own female issue, and the son of her sister, and other heirs of a daughter, can only claim the peculiar property of the woman; for the texts of MENU and VRĪHASPATI (CCCCLXXXV and DXIII) ordain *generally* the succession of daughters and the rest to any property of their mother and so forth; and although restricted by the precept of CĀTYĀYANA (CCCCLXXVII 2), which numerous authors consider as relating to wealth which has devolved on the wife by failure of nearer heirs, still there is nothing to restrict those texts in other cases. Again; if a daughter, a sister's son, and others, can only take the peculiar property of a woman, then, should wealth have been acquired by her mother, or by his mother's sister and the rest, in the practice of arts, commerce, or the like, there would be no certainty who may claim it after the death of the acquirers. But this commentator admits the sole right of a woman to that which she herself earns by arts or the like; for he explains the text of MENU, (Book III, Chap. I, v. LII 1), as merely implying her subjection to control; and expounds "the dominion of her husband," in the text of CĀTYĀYANA (CCCCLXX), as signifying his independent power by which he may seize it, even though not suffering extreme distress: although the dominion of a husband be there propounded, the uncertainty in regard to wealth which a widow has gained by arts or the like, is not obviated: the dominion of her husband's family and the rest over her *acquisitions* does not follow; for no law ordains it. If it be said, wealth which a woman acquires during coverture by arts or similar means is not her peculiar property, by the terms of the text (CCCCLXX), but any other effects are so; and the expression, "the separate property of a woman is declared to be sixfold" (CCCCLXII, &c.), is intended to except a less, not a greater number, as is acknowledged by commentators; the answer is, there still is an inconsistency on the opinion of JĪMŪTAVĀHANA: for the wealth which a woman acquires during coverture by arts or the like, cannot well be comprehended *in her separate property*; and, if it were comprehended in it, her husband would not have independent power over it. Does not the peculiar property of a woman signify generally that wealth possessed by her over which her husband ought not to exercise independent power, and that

that which should be inherited by daughters and the rest, excepting what is acquired by arts or similar means; for different senses of a term are in many instances admitted according to the difference of the subject? Then, what is the definition of the term “peculiar property of a woman?” If *it be explained*, wealth *received* on her account, excepting that which has devolved on her by failure of nearer heirs; what is the use of that exception, or whence is it deduced? Again; the observation, “wife is an indefinite term,” is impertinent; for the word wife is not contained in the text (CCCCLXXVII 2), and there is no proof that it should be understood; it is only inferred from the correlative term husband. It should not be argued, that it does not follow, from the insertion of the correlative term, that the wife of the late proprietor is intended; for it is not so shown in the maxim, ‘preserving the bed of her lord inviolate, she may enjoy the estate of her son,’ nor in other instances: neither can that be inferred from the words “gift or heritage (dāya) of her husband,” which occur in the preceding text (CCCCLXXVII 2), for those terms, explained as signifying wealth given by her husband, might be repeated *in interpreting the subsequent text, which would therefore relate to such gifts of her husband*; of course the word wife must be understood, *not inferred*. This should not be argued: for if some term must be understood, it may be woman, or some other equivalent word; and the subject, governed by the active term “enjoy,” being sought, “gift of her husband” must be repeated *from the preceding text*, or “estate of her husband devolving on her” must be understood. Again; *this text does not convey a general maxim*, that a “woman shall enjoy the heritage;” for sisters and the rest might *in that case* obtain the estate left by a brother: it is merely an explanatory precept limiting *the right* to simple enjoyment: and this is founded on the text of another legislator, expressing, “she shall only enjoy “the estate which has devolved on her by failure of nearer “heirs, and not give it away or sell it.” There is no proof that wife here signifies woman in general. If it be said, a sufficient argument may be drawn from this reasoning, ‘simple enjoyment being granted to a wife, who is first in the line of eventual succession to property devolving on collaterals, the same is also proper in the case of other female heirs;’ the last distinction

tion would be superfluous, since it must be *equally* admitted, that a daughter's son, a pupil and the rest, are likewise incapable of giving away or selling the estate: the wife is not first in the eventual succession to an estate, but the son alone is *first heir*; the law knows not ~~any~~ distinction between eventual and direct succession: this, and the words wealth devolving *on collaterals*, are used on some occasions by certain authors for the sake of their accepted sense. However, the term direct *or lineal* succession is employed for the purpose of *explaining, that the heir is subject to* the controul of his own son and the rest, in the disposal of wealth which has devolved on him as son, grandson, or remoter descendant *of the former proprietor*. Therefore wealth devolving on a son or other *lineal* successor, and on a wife or *collateral* heir, must be called heritage, because it is obtained in right of affinity or relation. Thus, if the maxim be established, that a wife shall *simply* enjoy the estate, a question arising on the expression "after *demise*, the legal heirs shall take it;" after the death of the wife must be assumed, 'not after the *demise of any woman*.' This term here signifies a female human being; and wife denotes a married woman. By discussing the objections and answers on the insertion of these several terms, *and the consequent inferences*, the volume would be needlessly enlarged: both *the questions and the answers* are therefore omitted. But though not directly supported by the text of any legislator, or concurrence of any commentator, the opinion delivered by JÍMÚTAVÁHANA is respected by many lawyers. However, he only says, that wealth which has devolved on a daughter goes after her *death* to the heir of her father; he has not expressly affirmed, that a daughter shall not aliene an estate which has descended to her: but if it be said, the general maxim, that after a woman the legal heirs *of the former male proprietor* take the estate, cannot be deduced without establishing a general rule that a woman shall *merely* enjoy an estate which has devolved on her, it then follows that such is his meaning, but not otherwise.

According to the opinion even of those lawyers who acknowledge the property of the husband in that which his wife acquired by arts, she shall *exclusively* obtain such wealth after the death of her husband, even though a son or other descendant exist; and after her death her own heirs shall take it: otherwise, by parity

of reasoning, a father having dominion over his unmarried daughter, ought to have property in wealth which she acquires by arts ; yet that has not been mentioned by any legislator.

If the daughters be numerous, a distribution is made. Such is their succession.

III. On failure of female issue, the son of a daughter is heir, according to JÍMÚTAVÁHANA and RAGHUNANDANA. BHAVADÉVA, observing “ daughters ” expressed in the plural number in the text of YÁJNYAWALCYA (CCCXCVIII), and inferring the implied comprehension of daughters both *fruitful and sterile*, and of the daughter’s son, because the plural number would otherwise be unmeaning, also *admits this succession*. The reasoning approved by JÍMÚTAVÁHANA is pertinent on this interpretation ; for he pronounces both daughters capable of inheritance. The word taken in a secondary sense here intends both a daughter and her male offspring, as son in the text of YÁJNYAWALCYA (CCCXCVIII 2) signifies *male issue, that is, a son, a son’s son, and the son of such a grandson*. The sense is the same in the text of DÉVALA (CCCCIV). But the reading of the rule of VISHNU, immediately after the words ‘ on failure of her, to the daughter,’ “ if she be dead, to the son of a daughter ” (CCCCXVII), is not acknowledged by JÍMÚTAVÁHANA ; for he has not cited that part of the rule under the head of Succession of a daughter’s son. That reading is approved by BHAVADÉVA. But the text of VISHNU, cited by GÓVINDA RÁJA, is universally acknowledged to be sufficient proof of the right of a daughter’s son.

CCCCXXI.

VISHNU :—On failure of sons, and of their male issue, the sons of daughters shall obtain the property ; for the male offspring of a son and of a daughter are equally qualified to perform obsequies for men of all classes.

CHANDÉSWARA also suggests the title of a daughter’s son in preference to brothers, by citing the text of VRĪHASPATI, with these

these words premised, 'immediately after a daughter, and the son of a daughter.'

CCCCXXII.

VRĪHASPATI :—On failure of them, uterine brothers, and sons of brothers, kinsmen bearing the same family name, pupils, and learned priests, are entitled to possess the estate.

From the difference of benefits conferred, and on the reason of the law, his title ought to take effect even before that of parents. The benefit conferred consists in the oblation of a funeral cake to the proprietor by the son of his daughter (CV). In respect of another world, the benefit conferred by parents consists in their sharing the funeral cake which should have been offered by the proprietor ; but, in succession to heritage, procreation appears to constitute a superior claim compared with the acceptance of the funeral cake : and the oblation of it *does so, when* compared with procreation ; for, it is shown that a son and the rest take the heritage, although a father or other ancestor be living.

“ On failure of them,” that is, in default of a daughter, and of a daughter's son, mentioned in preceding texts, “ brothers ” are the heirs. Such is the meaning ; and this supposes the failure of parents, as will be hereafter explained. The preceding texts are two, one of **VRĪHASPATI** quoted in a former chapter (v. CCXXIV 2), and another (CCCCXI) cited by **BHŌJADĒVA**, with these words premised, “ **VRĪHASPATI**, on the succession of a daughter who is or is not appointed *to raise up issue to her father.* ”

It should be here remarked, since **GŌTAMA** declares the mere intention to be a sufficient cause of considering a daughter as appointed to raise up issue to her father (CCXXVII), “ not appointed ” might be explained, not nominated by an express declaration that she is taken to propagate her father's race, *but* appointed by an implied intention ; yet it is almost fruitless so to expound it, and it contradicts many authors : that interpretation should not therefore be adopted. However, this text of **VRĪ-**

HASPATI does not solely propound the right of a daughter's son, *whose mother was not selected to raise up issue to her father*; for it may be apposite, as relating to the son of a daughter appointed by an implied intention. Consequently, on failure of the givers of a principal funeral cake, namely, the son, the son's son, and the son of such a grandson, the daughter's son, who gives a secondary funeral cake in the double set of oblations, is heir: that is propounded as confirmed by the reason of the law.

Then the title of a son's grandson, whether in the male or female line, may be supposed to precede that of both parents, by parity of reasoning, and because the text of VRĪHASPATI is nothing to the purpose. No; for this only declares the right of inheritance founded solely on benefits conferred; and the precept of VISHNU, cited by GÓVINDA RÁJA (CCCCXXI), is the ground on which rests the title of a daughter's son; and it is declared that he confers benefits (CV). It should not be argued, that the text of VISHNU relates to the son of an appointed daughter. The terms "who leaves no son nor son's son" would be inexplicable. It cannot be true, that the son of an appointed daughter, though acknowledged to be a son's son in contemplation of law, claims the estate after the issue of a son begotten in lawful wedlock; for it is established, that his mother has a share *of the estate* at the same time with the son of the body (CCVI).

Thus the grandsons of a son, both in the male and female line, are not comprehended in the texts of YÁJNYAWALCYA and the rest, by taking the terms *of the precepts* in a secondary sense. Accordingly, no ancient author has asserted the title of both to take the heritage.

As for the remark, that the texts of MENU, which are cited by JÍMÚTAVÁHANA to prove that the right of a daughter's son (CCXX γ & α & CCVII,) relate to the son of an appointed daughter, because she is mentioned in the context; the right of a grandson in the female line must nevertheless be somehow deduced from the implied sense of these texts, to obviate disparagement of the legislator, since it has not been separately declared by MENU; like the expression "the sun is set" in speaking of ablutions at twilight, *and of other duties to be performed at the close of the day*.

The learned do not positively hold, that, after the death of a daughter's

daughter's son, the heirs of his maternal grandfather shall take the wealth which had devolved on him ; but his son or other heir shall alone take that property.

Again, if daughter's sons be numerous, a distribution must be made. In that case, if there be two sons of one daughter and three of another, five equal shares must be allotted : they shall not first divide the estate into two parts, and afterwards allot one share to each son ; for such a mode of distribution is only ordained in partition among the sons of sons : and the reasoning is not equal, for a son's son, whose own father is dead, receives a share from his uncle ; but the daughter's son, whose mother is deceased, does not receive a share from his mother's sister.

As the daughter begotten by a man himself on his wedded wife equal in class, is alone heiress of her father's estate by the text of DÉVALA (CCCCXX), so the son of such a daughter alone succeeds, as grandson, to the estate of his maternal grandfather. This also should be understood. From the expression " who leaves no son," it appears, that, on failure of appointed daughters, the right devolves on one who has not been yet given in marriage ; and hence also it must be understood, that the son of any daughter, though *she were* not appointed to raise up issue to her father, is heir.

But some lawyers contend, that a daughter's son can *only* claim the succession on failure of all the heirs enumerated, *from the wife to the king* (CCCXCVIII) ; or, since there can hardly be a failure of the sovereign, in default of all those heirs preceding him. That is wrong ; for, immediately after *mentioning* the daughter's son, follows the text of VRĪHASPATI, " on failure of him, " brothers, &c." (CCCCXXII) ; and he does confer benefits. MADANAPĀLA also affirms the succession of a grandson in the female line, immediately after a daughter. The right of inheritance does not solely follow the benefits conferred.

MISRA considers the texts of VRĪHASPATI and the rest as relating to the son of an appointed daughter ; and he explains the precept of VISHNU also (CCCCXXI) as relating to the son of an appointed daughter, and as intended to authorise his succession to the whole estate, like the text, " all these adopted sons are " pronounced heirs of a man who has no son by himself begotten " ten " (CXC 3).

But GÓVINDA RÁJA contends, that the claim of a grandson in the female line precedes even that of a daughter. It is wrong; for this grandson is secondary in comparison with the daughter, since he becomes the offspring of *his grandfire* through her; and her prior right is proved, because VRĪHASPATI compares her son's claim to her own (CCCCXI).

On the death of a daughter's son, who has received the heritage of his maternal grandfather, his own son claims the estate; because it had become the property of his father, and because no express law resists his right. This should be noticed. Such is the succession of a daughter's son.

IV. On failure of them, the mother is heiress by the text of YÁJNYAWALKYA (CCCCXCVIII): thus the *Retnácara* and *Chintāmeni*. It should not be argued, because the term "both parents" signifies father and mother, that both shall inherit jointly. The text of VISHNU propounds their successive rights; "on failure of her, (*namely, the widow of him who dies leaving no male issue,*) the wealth goes to his daughter; if she be dead, (*and leave no son,*) to the father; in his default, to the mother" (CCCCXVII). Accordingly VRĪHASPATI propounds the succession of the mother, without reference to the father:

CCCCXXIII.

VRĪHASPATI:—The mother must be considered as heiress of her son, who dies leaving neither wife nor male issue; or, with her consent, the brother *may be heir*.

Here "with consent" signifies with the acquiescence of the mother. But the *Pārijāta* expresses, the term is illustrative, comprehending the father: the meaning therefore is, 'with consent of both parents.' Of what use is the sanction of the father, for the same effect follows the assent of the mother, who had a right to the succession? That is wrong; for indirect acquiescence is here meant, which may be expressed in these or other words, "I take it not:" there is no occasion to suppose a *formal* declaration of consent, in these words, "do you take it."

MENU also declares, that the mother inherits (CCCCXXIV). The succession of the father on failure of her is intended by YÁJNYAWALCYA, as appears from his precept, and from the texts of VISHNU (CCCCXVII) and of MENU (CCXXIII). Such is the opinion delivered in the *Retnâcara* and *Chintâmeni*.

CCCCXXIV.

MENU :—Of a son dying childless, *and leaving no widow*, the mother shall take the estate ; and she also being dead, the paternal grandmother shall take the heritage *on failure of brothers and nephews*.

But JÍMÚTAVÁHANA and the rest read the text of VISHNU (CCCCXVII), “on failure of her it goes to his daughter ; if there be none, to the father ; in his default, to the mother.” Consequently, on failure of the daughter’s son, the father is heir ; in default of him also, the mother : as for the texts of MENU and VRĪHASPATI (CCCCXXIV and CCCCXXIII), they must be understood *as apposite* on the failure of the father. The argument *on which this rests* is subjoined : a daughter’s son is preferable to a father, because he offers a funeral cake to the deceased, and two which the deceased was bound to offer ; but the father *would have* shared a funeral cake offered by the late proprietor, *if the latter had survived*, and presents two which he was bound to offer : the father is therefore inferior to the daughter’s son in respect of one funeral cake, because the acceptance *of it* is subordinate to the oblation ; and the mother is yet inferior to him, because she merely shares a single cake *which would have been* offered by the deceased. A text of MENU (CCLIV) is also proof of the inferiority of the mother compared with the father. Her superiority above the brother and the rest will be considered in its place.

The different rules of decision being founded on different readings of the text of VISHNU, there is no certainty on this point ; for neither reading can be rejected, since both are cited by *respected* authors. It should not be answered, the argument de-

livered by us, and other reasons stated in the treatise of JIMÚ-TAVÁHANA, prove the superiority of the father. More argument might be brought to prove the pre-eminence of the mother: for example, her importance declared in an authoritative text ;

A mother surpasses a thousand fathers, for she bears and nourishes the child in her womb ; therefore is a mother most venerable.

If the veneration due to her exceed the respect due to a father a thousand fold, how can the text cited from the *Purána* by MÁDHÁVÁCHARYA be relevant ?

By law, the father and the mother are two reverend parents of a man in this world ; however adorable *the goddesses of the earth*, a mother is *still* more venerable :

2. But of those two the father is pre-eminent, because the seed is chiefly considered ; on failure of him, the mother *is most revered* ; after her, the eldest *brother*.

He himself thus reconciles the seeming contradiction ; this relates to a father who gives *instruction to his son in the whole Vêda*, after performing the ceremonies on conception and all other holy rites which perfect the twice-born man : otherwise the mother is most venerable. Accordingly the text of MENU is also pertinent.

MENU :—A mere *áchárya*, or a teacher of the *gáyatri only*, surpasses ten *upádhyáyas* ; a father, a hundred such *ácháryas* ; and a mother, a thousand natural fathers.

He who, for his livelihood, gives instruction in a part only of the *Vêda*, or in grammar and other *védângas* and the like, is an *upádhyáya*, or sub-lecturer ; he who girds the pupil with the sacrificial cord, and instructs him in the whole *Vêda*, with the law

law of sacrifice, and the mysteries or sacred *upanishads*, is an *āchārya*. So MĀDHAVĀCHĀRYA, following the text of MENU*.

VYĀSA :—Ten months a mother bore her infant in her womb, suffering extreme anguish ; fainting with travail and various pangs, she brought forth her child ;

2. Loving her sons more than her life, the tender mother is *justly* revered : who could recite all her merits, even though he spoke a hundred years ?

By citing other texts from the *Purānas*, the volume would be unnecessarily swelled ; for this reason they are omitted. The seeming difficulty is thus reconciled : title to respect is no cause of inheritance ; were it so, who could take the estate while both parents exist ? But benefits conferred by his own act, and near relation by the funeral cake, *are the grounds on which rests the claim of an heir* : now, the father is superior by the benefits which he confers ; therefore he has the right of succession, even though the mother be living : and the reading approved by JĪMŪTAVĀHANA must be followed in the text of VISHNU (CCCCXVII) ; for YĀJNYAWALCYA declares, “ If two texts differ, reason, *or that which it best supports*, must in practice prevail, when the reason of law can be *shown*.”

But other lawyers argue, if the estate of a son devolve on his mother while the father lives, still the latter has the sole right to it ; for it is not her exclusive property, being different from gifts received before the nuptial fire, or at the bridal procession or the like ; and while her husband lives, nothing is acknowledged to be her exclusive property, except that which was given to her.

The father is heir on failure of a daughter's son ; and the mother, in default of the father : the opinion of JĪMŪTAVĀHANA and the rest is respected by many lawyers, as that which should be now followed in practice.

After the death of a mother, who has inherited the estate of her son, the heirs of her peculiar property shall not take the succession, but the heirs of the son. So JĪMŪTAVĀHANA. It shall
not

* Chapter ii, V. 140 and 141.

not be aliened by the mother in her life-time : this also is affirmed by the learned to be the opinion of JÍMÚTAVÁHANA. MISRA also asserts, that she has no power to give away, or otherwise aliene, property which devolved on her *by failure of nearer heirs*. This lawyers affirm *to be a settled rule*.

V. On failure of the mother, brothers *take the estate*, by the texts of YÁJNYAWALCYA, VISHNU, VRĪHASPATI, MENU, GÓTAMA, (who uses the word eldest as an illustrative term intending all brothers,) DÉVALA, and CÁTYÁYANA (CCCCXVIII, CCCCXVII, CCCCXXII, CCXXIII, CCCCIV, and CCCCXXV).

GÓTAMA :—The wealth of deceased brothers goes to the eldest *and the rest*.

CCCCXXV.

CÁTYÁYANA :—On failure of male issue, the father shall take the estate acquired by his son after partition, or the brother, or the natural mother, or the paternal grandmother, in regular order.

Here the order of succession, to which the texts of DÉVALA and CÁTYÁYANA allude, follows *the precepts of YÁJNYAWALCYA* and the rest. Such is the opinion of JÍMÚTAVÁHANA and others ; CHANDÉSWARA also must be understood as assenting to that opinion : but MISRA, in expounding the text of CÁTYÁYANA, alleges a two-fold established case ; the father shall inherit what had been acquired by him, and the brother and the rest shall succeed to that which had been gained by a collateral relation. On his interpretation, it must be inquired, what shall become of property inherited from ancestors and so forth ? CHANDÉSWARA infers, from a text above cited (CCCCX), that, on failure of a wife distinguished by good qualities, of a daughter, and of a daughter's son, the brother is first heir of property which he who leaves no male issue had himself acquired : in default of brothers, both parents ; or, if those be dead, the wife not distinguished by good qualities and so forth. But JÍMÚ-

TAVÁHANA

TAVÁHANA and the rest affirm, that, on failure of the wife, daughter, and daughter's son, the father, mother, and brothers, in order, take every sort of property.

In the text of YÁJNYAWALCYA, the term being exhibited in the plural number, it is thereby suggested, that brothers variously distinguished have a right of inheritance. Although their relation might be considered as single, in as much as it is the affinity of a brother, it is nevertheless distinguished into many sorts, to intimate their successive titles. That order of succession is subjoined: in the first place, a re-united brother by the same mother shall take the estate of one who leaves no male issue; on failure of such, the uterine brother not re-united, and the re-united one by a different mother, have equal claims; in default of them, the half-brother, who is not re-united. So RAGHUNANDANA and JÍMÚTAVÁHANA. The proofs are subjoined.

JÍMÚTAVÁHANA *expressly* says, in collateral succession, the uterine brother has the first claim; as declared by the text, "an uterine brother shall transmit and receive the heritage to and from his uterine brother, *as he happens to live or die.*"

CCCCXXVI.

YÁJNYAWALCYA:—Two brothers, who, after their forisfiliation, have both re-united themselves to the family of their father, shall reciprocally transmit and receive their estates, as they happen to live or die; and so shall two uterine brothers*.

Consequently, YÁJNYAWALCYA, having propounded in general terms the succession of brothers, whether by different mothers or by the same, whether re-united or not (CCCXCVIII), subjoins this text, for the sake of exhibiting a distinction, by virtue of which, if a single brother have both claims, as related by the whole blood and as re-united, he bars all the rest. The share of one re-united brother who deceases, another re-united one shall receive

* This version of the text is transcribed from a manuscript of Sir WILLIAM JONES. It is variously explained in the subsequent commentary. T.

receive and so forth ; but a whole brother, not one by the same father only, shall alone receive the share of a re-united brother by the same mother. A similar opinion is delivered in the *Dīpacalīcā*.

CCCCXXVII.

CĀTYĀYANA :—On failure of nearer claimants, re-united brothers must be considered as heirs of those who are re-united, and disunited brothers of those who are disunited ; *for* they reciprocally share *the estates* if they have no progeny.

Brothers who are not re-united, take not the shares of those who die after re-union ; but disunited brothers must be considered as heirs of those who die disunited : “ on failure of nearer claimants,” that is, in default of a wife and the rest. The last terms of the text are joined in the apposition called *dwandwa*. So **CHANDÉSWARA**. These terms are added to show the reason *of the precept* ; the meaning therefore is, ‘ because they are competent to take each other’s shares when they have no issue :’ this also some lawyers affirm. By expressing, in general terms, that re-united brothers are heirs of their coparceners, it is intimated, that a re-united brother of the whole blood succeeds, to the exclusion of one who remains separate. **VĀCHESPATI MISRA** also observes, that uterine brothers, who are not re-united, do not take the heritage. Consequently, if there be whole brothers, one of whom is, and the other is not, a coparcener, the re-united brother by the same mother has the sole right of succession, by consent of many authors.

But if two re-united brothers, one by the same, the other by a different mother, claim the succession, what is the rule in that case ? To this **CHANDÉSWARA** replies, the meaning of the text (CCCCXXVI) is this : on the competition of brothers of the whole and half blood, the whole brother shall alone take the estate. Accordingly,

CCCCXXVIII.

CCCCXXVIII.

Vrihat MENU :—If a brother by the same mother be living, one by a different mother shall not take the estate; the law is the same, even though it be immoveable property; but, on failure of the whole brother, one of the half-blood may indeed possess the estate.

This is reasonable; for, it is said by JÍMÚTAVÁHANA, if one have two claims, as brother by the same mother and as re-united, he bars all other claimants; therefore the re-united brother of the whole blood is sole heir to the estate of the deceased: but, on failure of him, the disunited brother by the same, and re-united one by a different mother, have equal claims; because one is brother of the whole blood, though disunited; the other re-united, though brother of the half blood: and CHANDÉSWARA remarks, ‘thus it is shown that relation by the whole blood is a ground on which even a disunited brother may take the inheritance;’ since there are arguments on which both may claim the succession, it is therefore declared that both shall inherit: and MISRA observes, ‘a brother by a different mother, having re-united himself to the family, shall take the estate of his half-brother; but not unless he re-unite himself:’ an uterine one, however, may take the inheritance, even though he do not re-unite himself to the family (interpreting the text by connecting remote terms). The following precept is explicit:

CCCCXXIX.

YÁJNYAWALCYA :—A brother by a different mother, if he return after partition to the family, not any other half-brother, shall inherit the estate; but a whole brother, even without returning, shall succeed *to it*, not a *disunited* half-brother by the same father only, *except on failure of the rest*.

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The term employed in this text signifies brother by a different mother ; having returned to the family, he may take the estate *of a coparcener*, but not that of a half-brother, who is not re-united: it is thus shown, that he can only inherit the estate when he had returned to the family. “ A whole brother * ;” one who springs from the same father and mother ; in short, a uterine brother. “ Not re-united ” is repeated in the last part of the text. Consequently a whole brother, though not re-united, shall take the estate ; hence it follows, that he shall succeed to his whole brother, who had not returned to the family. Since an order of succession is not mentioned, these two shall succeed together ; and a partition shall therefore take place between them. On failure of uterine brothers, the legislator adds, “ not a half-brother by the same father only ;” that is, one who is not re-united shall not take the estate. Hence, if there be half-brothers, one of whom is and the other is not re-united, the disunited half-brother is not heir. The equal claim of a re-united half-brother with a re-united whole brother had been already denied, the equal claim of a disunited half-brother with a re-united half-brother is now denied ; there is consequently no vain repetition. Such is the interpretation approved by CHANDÉSWARA. MISRA says, the last terms of the text are a mere repetition.

On the reading of the second measure *nānyōderyō d'hanam harēt*, the construction is, ‘ a half-brother, who is not re-united, shall not inherit the estate.’ JĪMÚTAVAHANA thus expounds the text : a half-brother, being re-united, shall take the estate, not a disunited one ; whole brother is repeated from the preceding text (CCCCXXVI) ; ‘ but a whole brother, even though not re-united, shall succeed, not solely the re-united half-brother.’

But others thus comment on both texts of YĀJNYAWALKYA (CCCCXXVI and CCCCXXIX) : if there be whole brothers, some of whom are and others are not re-united, the legislator says, “ a re-united brother shall take the heritage of a re-united one ;” if the whole brothers remain separate, he says, “ an uterine brother shall take the heritage of an uterine one.” In that case, if there be a re-united half-brother, what shall be the consequence ?

* *Sanfrishṭa* ; its more obvious sense, in which the term is often used, is “ re-united :” the text might be translated, without deviating from that sense, in some one of the modes subsequently proposed. T.

sequence? The legislator replies, "a brother by a different mother, if he return after partition to the family, shall take the estate." Since both have claims to the succession, they shall inherit equally; but a half-brother, who had not re-united himself, shall not succeed: this the lawgiver declares, "not any other half-brother." If a uterine and a half-brother have returned to the family, what shall be done in that case? To remove the doubt whether both shall inherit under the vague expression of the text, "a re-united brother shall inherit the estate of a re-united one" (CCCCXXVI), the legislator says, "the re-united half-brother by the same father only shall not take the inheritance" (CCCCXXIX).

Some lawyers affirm, that re-union of parceners is not a ground of succession; for, were it so, it might be supposed that a son who is owner of separate wealth, and a brother's son, would not jointly inherit the property possessed by a paternal uncle re-united with his nephew. On the contrary, inheritance positively rests on other claims. Thus, succession in right of fraternity being established, *the re-union of one* bars any other brother. In like manner, if there be a whole brother not re-united, since he alone has a claim in right of affinity by the whole blood, he alone shall inherit; not a half-brother, even though re-united. Thus the text above cited (CCCCXXVI) relates to uterine brothers only; and the legislator denies the claim of a half-brother in the subsequent text (CCCCXXIX); "a brother by a different mother, whether re-united or not, shall not inherit the estate of his half-brother" (*reading the text nānyóderyadhanam harét*): but on failure of uterine brothers, the legislator adds, "a re-united *half*-brother, not *any other* half-brother by the same father only, shall inherit the estate."

That is wrong, since it contradicts all *respected* authors, and is inconsistent with the reason of the law; for, why should not re-union be a cause of a brother's succession, as well as relation by the whole blood? If it be said, since a son, a wife, and the rest, confer benefits on the proprietor in another world, there is no parity between that claim and one founded on re-union; but a uterine brother confers benefits, by offering the double set of oblations for the mother; *the answer is*, a re-united brother also defrays religious ceremonies by means of *his* property *thrown* into parcenary. On failure of either a disunited whole brother, or of a re-united half-

half-brother, the other is heir: in the one case, if there be half-brothers, one of whom is and the other is not re-united, the re-united brother has the sole right *to the inheritance*, not the disunited one; for the text of YĀJNYAWALCYA expresses, “a re-united brother shall receive the estate of a re-united one” (CCCCXXVI). On failure of both these *prior claimants*, a disunited brother by a different mother shall inherit, because he also is brother by the same father. Since a mother also claims the funeral cake and other oblations, which are given by an uterine brother in the *śrāddha* performed with a double set of oblations (CCCCXCVI), the whole brother is superior to one by a different mother, because he offers the double set of oblations for the mother of the late proprietor: since two brothers, living in the same house, afford reciprocal support, preserve each other's property, confer mutual benefits by the acquisition of wealth, and respectively earn religious merit at the expence of wealth acquired by each other, they are nearer the one to the other than a disunited brother.

Who is called a re-united parcener? He is thus defined by VRĪHASPATI:

CCCCXXX.

VRĪHASPATI:—He is said to be “re-united,” who, having made a partition, lives again, through affection, with joint property in the same house with his father, his brother, or his paternal uncle.

After brothers have made a partition by mutual consent, when any one of them lives *again* with a certain other brother, these two are *said to be* re-united. Their dwelling together is not simply a residence in the same house or abode, (for that may happen even without affection, when the habitations are not equally numerous with the brothers;) but it consists in forming one household: and their intentions are thus declared, “what is thy property is mine;” their effects are thus intermixed: “the duties of us both shall be the same;” an agreement for community of duties is thus made: in like manner, *one is made for* common fare: and this is deduced from the insertion of the terms “through affection;” else this word would be superfluous, since they could
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not dwell one moment together without affection : but now such particular regard is suggested by that term.

“ In the same house ;” in the same household. Consequently two brothers, again living together, through mutual affection, as joint-housekeepers, after having made a partition, are called re-united parceners. Such is the meaning ; and the text is so interpreted by RAGHUNANDANA, JÍMÚTAVÁHANA, VÁCHESPATI MISRA, and the rest.

When the owners of several property live together as joint-housekeepers, making a common stock of their fortunes, they are said to be re-united ; for this is *an easy interpretation* : not making a common stock of their fortunes after partition ; for this would be *a burdensome condition*. Some become owners of several property by partition ; others are naturally so. Thus union, founded on affection, may take place between two persons sprung from different families, natives even of different countries. This some lawyers affirm. It is wrong ; for such united persons are no-where seen ; and the terms of the text, “ having made a partition,” would be unmeaning ; and it is improper to consider any term as nearly superfluous, which may become pertinent : accordingly a burdensome condition cannot be imputed as a fault. Re-union consists in dwelling together as joint-housekeepers, after making a joint stock subsequent to partition. It should not be argued, that partners in trade, living together after a distribution of wealth gained by commerce, would be called re-united. Partition signifies distribution of heritage. Such being the case, may not the sons of two sisters be re-united ; for they may happen to live together in the same household, after a partition of the property left by the maternal grandfather and the rest ? Heritage here signifies wealth inherited in the direct male line : such is the meaning, as appears from the terms of the text, “ with his father, his brother, or his paternal uncle.” They alone are determinately meant, who were not separate by their birth. Of these, the father is first mentioned, as the distributor of the estate, when it is divided in his life-time : the term, taken comprehensively, includes also the paternal grandfather and great-grandfather ; the brother is next mentioned, as the distributor of shares among brothers ; and lastly, the paternal uncle is named, as the person who distributes an estate shared with a son’s son, whose own father is dead :

dead: the term, taken comprehensively, includes the son and grandson of a paternal uncle, and the great-uncle and others; the wife of a brother and the rest are not meant, because they are subject to the controul of their husbands and so forth. Among those only does re-union take place; not among others: but the practice of returning to coparcenary after partition with the son of a paternal uncle does exist, as remarked by CHANDÉSWARA. It should be here noticed, that if two brothers die after dividing the estate, the re-union of their sons or grandsons is not consistent with the obvious sense *of the law*; because he who made a partition does not *in this case* return to a common dwelling. Such is the opinion of MISRA and CHANDÉSWARA.

JÍMÚTAVÁHANA likewise holds, that they only who may be coparceners by birth (in respect of property acquired by a father, brother, paternal uncle and the rest), having made a partition, are re-united by dwelling together in the same house as joint-housekeepers, after annulling the former partition, through mutual affection, by a declaration in this form, "thy wealth is mine, and that which is mine is thine." There is no re-union of any other persons, such as partners in trade, by the simple junction of property.

Here the son or other *male* descendants of a paternal uncle are comprehended in the term "and the rest," as appears to have been understood by SRÍ CRĪSHNA TERCÁLANCÁRA; for he has remarked, on the words "by birth," that the mother is thereby excluded, because her claim to property arises from marriage: else the commentator would have said, 'the mother is excluded, because she is not *found* among the persons enumerated, namely, the father, brother, and uncle.'

But RAGHUNANDANA affirms, that re-union only takes place between father and son, between brothers, or between paternal uncle and nephew. In effect he considers the term "and the rest," in the remark of JÍMÚTAVÁHANA, as comprehending only the son and nephew. JÍMÚTAVÁHANA again observes, when treating of the shares of re-united parceners, "re-union should not be admitted among others besides those who are expressly mentioned, else the enumeration would be unmeaning." The author of the *Pracāśa*, after citing the text, adds, this is a positive precept. *However*, the opinion of CHANDÉSWARA

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and the rest is consistent with the reason of the law ; for there is no difference whatsoever, whether the paternal uncle or his son be the distributor. But the opinion of RAGHUNANDANA, and of the author of the *Pracās'a*, follows the letter of the text. This should be examined, and one opinion only should be established.

Among four brothers, if two be separated, and two remain undivided, but the effects be distributed by arithmetical computation or the like ; for example, ten *suvernas* out of twenty have been allotted to two brothers, and five a-piece to the other two, or if land or the like have been similarly distributed, in that case, should one of the two undivided brothers die, leaving no son or other near heir, by whom shall the effects, assignable for his share, be taken ? Not by the uterine brother, in so much re-united ; for he is not so *in the strict sense of the term*, since re-union consists in living together after partition, with an agreement in this form, " what is thy property is mine ; and what is my property is thine : " but in this case partition had not taken place between those two coheirs. Nor shall all the surviving brothers by the same mother take *the lapsed share* ; for that would contradict common sense : it is difficult to find a reason why a re-united parcener shall alone inherit when brothers live together after partition, and all the brothers succeed when some of them live together without ever making a partition : in administrative justice the letter of the law must not be solely followed. If it be said, partition by common consent of all the brothers is authorized by *express* ordinances ; but the law has not indicated partition among some of the coheirs, and coparcenary of others, and no special rule of decision has been delivered on this point ; no such partition ought therefore to be made : *the answer is*, if certain *Sūdras*, or the like, not having seen the codes of law, make such a partition, a rule of decision becomes necessary. Nor is that distribution void ; for it has been made by the free consent of all the coheirs, and no special law forbids it.

To this lawyers reply, the expression " having made partition, " does not intend a division reciprocally granted, but any distribution, whether accepted or made by both the parceners, between whom re-union takes place. Consequently, two brothers have in this case a single allotment, the others have *separate shares* :

partition therefore takes effect even in regard to those two; and they afterwards live together as joint-housekeepers. It should not be objected, that the word "again" becomes irrelevant, because they do not twice live together. Since the literal sense of that term is burdensome, and there is no occasion to distinguish the shares, when re-union takes place, the word must be taken in a secondary sense. But other lawyers affirm, that an undivided heir, as well as a re-united one, excludes a divided heir: in the silence of the law, this must be established by reasoning.

In fact, a distribution is in such a case made among all the co-heirs, by an act of the mind; accordingly the portion of an eldest son, the best house and the like, are allotted: in its consequences there is no difference. This brief exposition may suffice.

Under the text above cited (CCCCXXVI), shall not one re-united brother take the vested share of another, even though he leave a son, a wife, or other near heir? No; for VRĪHASPATI denies it (CCCCVII). "Or seclude himself from the world" (CCCCVII 2): the particle has a connective sense, alluding to degradation and the like. "It devolves on his uterine brother:" consequently, if brothers by the same and by different mothers had re-united themselves with the deceased, the uterine brother has the sole right of succession; but a re-united one by a different mother, and an uterine brother *not re-united*, have an equal claim: both these inferences are here justified. "To her who is his sister a share must be given" (CCCCVII 3) to defray her nuptials, as already explained. "Such is the law concerning him who leaves no issue" (CCCCVII 3), neither a son, a son's son, nor the son of such a grandson, nor a daughter, nor the son of a daughter: "nor leaves a wife, nor father, nor mother;" that is, no wife endowed with good qualities, as above mentioned; the word mother is understood, having been regularly dropped by the rules of etymology. It follows, that a difference arises from the re-union of parceners in collateral succession only; but the claim of re-united brothers is not stronger than that of a wife and the rest.

The texts of MENU (CCCCVI), bearing the same import with those of VRĪHASPATI above cited, must relate to a re-united brother, who leaves no son, nor wife, nor other near heir. CUL-LÚCABHATTA concurs in this opinion. "His uterine brothers"

thers" (CCCCVI 3): by repeating *the word* re-united, this relates to the uterine brothers who have returned to coparcenary; and the term is also taken in a general sense: consequently, if brothers by the same and by different mothers had re-united themselves with the deceased, the uterine brother is sole heir; but if he have not returned to coparcenary, he has an equal title with the re-united brother by a different mother. This sense is deduced *from the text*.

"Such brothers as were re-united," that is, half-brothers; for uterine kindred had been already mentioned: by the word "re-united," such brothers, not having returned to the family, are excluded. "And sisters:" this relates to the allotment of a sufficient sum to defray their nuptials. As for the remark of CULÚCABHATTA, that uterine brothers and sisters shall assemble and divide equally the vested share of their uterine brother, it must be affirmed that his meaning is the same: he cannot intend that their rights shall be equal; for it is no where seen that sisters inherit the property of their brothers, and the text is well explained as relating to the allotment of a sufficient sum to defray their nuptials. As for another observation of CULLÚCABHATTA, that, among brothers by the same and by different mothers, they alone who use the same furniture and utensils, having made a common stock of their several effects, shall divide his share, not all the brothers by the same or by different mothers: here also his meaning must be understood to be the same; re-united brothers by a different mother inherit only on failure of a re-united one by the same mother.

"Uterine sisters," not given in marriage: they afterwards belong to the family of their husbands. So the *Pracās'a*, cited in the *Retnācara*.

CCCCXXXI.

YAMA:—Immoveable undivided property shall be the heritage of all the brothers, *be their mothers the same or different*; but immoveable property, when divided, shall on no account be inherited by the sons of the same father only.

The meaning therefore is, 'all brothers, whether sons of the same father and mother, or of the same father only.'

JÍMÚTAVÁHANA.

If any immoveable property of divided heirs, common to brothers by different mothers, have remained undivided, being held in coparcenary, the half-brothers shall have equal shares with the rest; but the uterine brother has the sole right to divided property moveable or immoveable. The text of *Vṛihat* MENU likewise intimates the same, by alluding to a distinction in respect of immoveable property, when the subject proposed was already ascertained by the former part of the text (CCCCXXVIII). This maxim, say lawyers, should be likewise adduced in the case where no re-union has taken place.

Even a son given, provided he be virtuous, is *considered as* allied by the whole blood, if he were accepted by the mother of the son born in lawful wedlock; but, if not adopted by her, he is *considered as* a half-brother; for, in the case of a son given and the rest, adoption is acknowledged to be equivalent to procreation.

On the death of one who has received the inheritance of his brother, his own son or other heir claims the succession, not the son of any other brother; for he has no lien on the property of his uncle, the estate having already devolved on a collateral relation. Such is the succession of brothers.

VI. On failure of them, the son of a brother is heir, by the texts of YÁJNYAWALCYA and VISHNU (CCCXCVIII, CCCCXVII;) and because he offers two funeral cakes to ancestors of the late proprietor, one to his father, the other to his paternal grandfather. A brother's son has not an equal claim with a brother; for VISHNU says, "if he be dead, it goes to the brother's son;" "and he" must relate to the nearest term "brother:" and YÁJNYAWALCYA intimates, that, in default of brothers, their sons inherit, by saying, "on failure of the first of these, the next in order shares the estate:" and a brother, who is the giver of six funeral cakes, or of three (*if he be son of the same father only*), which it was incumbent on the late proprietor to offer, is superior to the brother's son, who is giver of two funeral cakes, which the late proprietor was bound to present to his father and paternal grandfather. JÍMÚTAVÁHANA concurs herein.

in. As for the assertion, that the son of a living brother does not inherit, merely because he confers no benefits, since he does not offer the funeral cakes, that is futile; for it might be thus supposed, that the son of another deceased brother would inherit *in preference to his uncle*; and you must admit, that, on failure of other brothers, the son of a living but degraded brother does inherit: assuming the natural claim of a nephew, whose father is alive, like that of a daughter's son, whose parent is living, he might have a right of succession. Neither can it be affirmed, that the paternal uncle ought to have an equal claim with the brother's son, because he offers funeral cakes to the paternal grandfather and great-grandfather of the late proprietor. The brother's son has a superior claim, because he presents an oblation to the *late proprietor's* father, who is the person chiefly considered. Thus JÍMÚTAVÁHANA. The father is indeed pre-eminent; because a man has no right to perform a *s'ráddha* for his paternal grandfather or other ancestor, unless he have a right to perform one for his sire; and the father is nearest of kin *to the late proprietor*.

Here again a distinction must be admitted: the son of an uterine brother has the first claim, because he confers benefits on the mother of the late proprietor; for it appears from a text cited by JÍMÚTAVÁHANA, RAGHUNANDANA and the rest (CCCCXXXII), that the father's natural mother also shares with her husband the funeral cake offered by a son's son; but those benefits cannot be conferred by the sons of half-brothers: *however*, on failure of other nephews, the son of a half-brother may inherit.

CCCCXXXII.

The mother shares with her husband obsequies solemnly performed *by his son*; the paternal grandmother, with her husband; and the mother of the paternal grandfather, with her's.

If any one nephew be re-united, shall he alone take the whole, or shall he share it with all the sons of brothers? It should not be argued, that a brother's son, being re-united, has the sole right

of succession, by the general maxim above cited (CCCCXXVI). That text being propounded in the course of treating upon the Succession of Brothers, must be taken specially, as relating solely to that subject. Such being the case, it was vain to mention the re-union of a nephew with his paternal uncle : this should not be affirmed. They are all mentioned to authorize that re-union, because they thereby become similar to undivided coheirs by having common duties and common income and expence. MENU and VRĪHASPATI have only ordained the *preferable* claim of a re-united brother ; and no legislator has expressly declared the title of a re-united uncle or nephew. As for the text of NÁREDA (CCCCXXXIII), that also, from its coincidence with the precept of VRĪHASPATI, must be considered as relating to the same subject.

CCCCXXXIII.

NÁREDA :—The *vested* share of re-united brothers is declared to belong exclusively to them : in any other case than this, they shall not *exclusively* share the inheritance of the deceased ; it shall go to other brothers, when no issue is left.

That which is the vested share of re-united brothers belongs exclusively to them ; in any other case, that is, if the deceased were not re-united, they who were shall not share the inheritance ; that is, they shall not take the entire allotment of the deceased. Then, who shall receive that share ? The legislator replies, “ it shall go to others,” that is, to other brothers. Or the sense may be, ‘ in any other case, that is, on failure of re-united brothers, it shall go to others not *naturally* entitled to partake of the share ;’ that is, to other brothers : share here signifies the property or inheritance ; the natural partakers of it are obviously the sons ; it goes to others, that is, to brothers. Or the sense may be, ‘ when half-brothers are re-united, such re-united brothers by different mothers may inherit from each other ; in any other case, that is, if they be not re-united, half-brothers do not share the inheritance, but it shall go to others, namely to the full brothers.’ CHANDESWARA says, the meaning is this : in any other case,

that

that is, on failure of re-united brothers, it shall go to others, not *first* entitled to share the inheritance, or who do not claim the succession in right of re-union. But the author of the *Pracās'a* thus expounds the text : "than this" alludes to something understood, namely to the case of one who leaves no male issue : in any other instance, that is, if he do leave male issue, the re-united brothers shall not share the inheritance ; but when they die childless, it shall go to others, namely to brothers and the rest. The mention of re-union is solely intended for the succession of brothers ; hence it is not specially considered in the case of a brother's son : if this be affirmed, it may be answered, the author of the *Dīpacalīcā* does not concur in that opinion ; for, in expounding the text of YÁJNYAWALKYA (CCCCXXVI), he sub-joins the term "or other parcener" after the word "brother," and delivers this gloss : the share of a brother or other parcener dying after re-union, another re-united brother or coheir shall take. Consequently, the maxim must be established on the sense conveyed by the phrase "a re-united parcener shall receive the vested share of a re-united one" (CCCCXXVI) : and that sense may be thus expressed ; the re-united coheir alone shall take the estate, if there be others related in the same degree, but not re-united : it exhibits an exception to the general rule of inheritance deduced from another text. Thus, if a father, having made a partition among his sons in his life-time, and becoming re-united with any one of them, die after the lapse of a few days ; in that case, the re-united son, and no other, shall inherit his property. Accordingly MISRA affirms, that, in the case of re-union between parent and child, the re-united son alone, not the disunited one, obtains the share of his father, although another separated son be living ; for it is declared, without reservation, that a re-united parcener receives the inheritance from a re-united one : and the re-union of father and son has been also propounded by a text above cited (CCCXXX). What is thus affirmed by him, is alone just ; for the claim of other sons on the property of their father was annulled by partition, and the right of the re-united son was revived by re-union.

It must be here inquired, how the remark, that their property is annulled by partition, can be apposite ? for, while the father lived, the son had no right to his wealth before the distribution of it,

it, and the text of YÁJNYAWALKYA (XCII) merely implies, that partition of an estate inherited from the paternal grandfather may be made at the will of the son : even admitting the literal sense of that text, sons could never have a claim on the wealth acquired by the father himself.

In saying ‘ the right of sons was annulled by partition,’ the meaning is this : the son naturally had a claim on the property of his father by birth alone, under the rule of GÓTAMA (Ch. I. Sect. I. Art. I.) ; but, not being then independent while the father was living, since the text of CÁTYÁYANA expresses “ a son becomes independent after the death of both his parents ” (Book II, Chap. IV, v. XV 5), he had no title to *claim* partition or the like ; but after the death of his father he has such a right : this is declared by DÉVALA in these terms, “ they have not ownership while a faultless father lives ” (V), that is, they have not independent dominion, although they have a proprietary right. It is not said in the law, YÁJNYADATTA has not ownership of the property of DÉVADATTA : nor is a son destitute of right to the paternal estate, while his mother survives ; consequently, such a title only is annulled by partition. If it be said, this is the meaning intimated by VÁCHESPATI MISRA, the answer is, that opinion is not confirmed by JÍMÚTAVÁHANA and the rest : were it even admitted by them, it would not be here affirmed ; for, if a father, having made a partition with his sons, die after re-uniting himself with any other parcener whomsoever, *it would follow, that* his property could not be inherited by the divided sons : but no other persons ought to take the succession while sons live, since none can like them have a present right to his property.

The commentator observes, ‘ it should not be affirmed that it is not so, because the text contains an exception, “ this law concerns him who leaves no issue ” (CCCCVII) ; for that relates to a son born after partition.’ To this again it may be objected, that the word “ this,” occurring in the text of the legislator, must, if possible, be referred to the law propounded by him, *that is,* to the claim of a re-united brother by the same mother on the property of a re-united one, and to the succession of a disunited brother by the same mother, on failure of such re-united brothers, propounded in the text immediately preceding it ; not to a distinction

tion founded on re-union, for VRĪHASPATI has not, like YÁJNYAWALCYA (CCCCXXVI), noticed *such a distinction*. It is improper to reject, without sufficient cause, the law promulged by the legislator himself, and assume one propounded by another author as intended by the word “this :” and there is no proof, that the expression “his share shall devolve on his uterine brother,” should be explained as signifying generally the right of any one re-united parcener to inherit the property of another. In like manner, there is no argument to prove that the terms “who leaves no male issue” relate to a son born after partition. Hence this text (CCCCXXVI) is intended to propound a distinction founded on re-union, when there is a competition of heirs related in the same degree : the re-united parcener alone shall therefore take the heritage, if there be whole brothers, or half brothers, or paternal uncles, or others as near of kin to the deceased ; for no distinction is found in that phrase ; and the preceding text related to all *re-united parceners*, and a question may arise on *the claims of all*. Hence, it should not be admitted that this text relates to brothers only. So JÍMÚTAVÁHANA and RAGHUNANDANA. The words “and the rest” being inserted in the expression “paternal uncles and the rest,” many lawyers thus state the opinion of JÍMÚTAVÁHANA : a son might be here comprehended under the terms “and the rest ;” but that is not elegant ; for, since he has precedence above all other heirs, he ought to be first mentioned : or the son of a paternal uncle and the rest might be comprehended, but that is not the opinion of RAGHUNANDANA. Yet in fact both ought to be included, conformably with *the sentiments of MISRA and CHANDÉSWARA*. On the death of him who, having made a partition, re-united himself with his paternal uncle in preference to his own brother, would not the brother and paternal uncle have equal claims ? If it be said they are not related in the same degree, *the answer is*, the same might be supposed of brothers by one or more mothers. To the question proposed the answer is, they have not equal claims ; *for* the title of brothers in right of fraternity is alone propounded by the text (CCCCXXVIII).

We resume the subject. The right of a nephew or other parcener who has returned to the family being thus proved, the re-united son of an uterine brother has the first claim : on failure

of him, such a son of a half-brother, and the disunited son of a whole brother, have equal claims : on failure of either of them, the other is heir : if there be neither one nor the other of these claimants, the disunited son of a half-brother is heir. In respect of immoveable undivided property, no author has said, that nephews of the whole and half blood have equal claims, by parity of reasoning, as in the case of brothers ; and the text of the legislator is not explicit on this point.

Has the son of a re-united brother a special title or not ? There is no law on this subject ; nor is the son of a re-united parcener acknowledged to be so himself, for there is no proof of it. If he be not considered as a re-united coheir, the right of deduction in favour of the eldest might be supposed when he makes a partition with his paternal uncle ; for the text (CCCCVII) only denies the right of the first-born, when partition is made among re-united parceners. Nor should this be deemed admissible ; for it is inconsistent with the reason of the law. Admitting that he is not a re-united coheir, still he is an undivided one ; and, as such, he ought therefore, by parity of reasoning, to take the heritage like a re-united parcener, although separated coheirs be living. When this is demonstrated, then the son of a re-united parcener, so long as partition be not made, shall take the heritage, although separated coheirs be living, who are equally near of kin to the deceased. Accordingly, if two of four brothers have not made a partition, the property of one undivided brother shall devolve on the other : in like manner, if a man have made a partition with his children, and a son born afterwards die leaving male issue, such a grandson alone shall inherit the property of his paternal grandfather ; not the son with whom partition had been already made, nor his male descendant. Some authors thus expound the law.

But, in fact, since it is only declared that a re-united parcener shall alone take the inheritance, the undivided coheir shall not succeed *in preference to others* : in the case of four brothers, above stated, it is admitted that two *remaining in coparcenary* shall be considered as re-united after partition ; for shares must be allotted to all, that the portions may be made equal, as required by the law before cited (XXXIX i). The son born after partition is sole heir of the whole property left by the father, under a text
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above quoted (C) ; but no law is found by which his son shall become sole heir. What share shall he receive ? If he may take the allotment which was due to his father, under a text formerly cited (LXXIX), the remainder of the paternal estate was the due allotment of his father ; and he shall therefore obtain it. *To the question thus proposed the answer is, he shall take so much as would have been the share of his father, supposing him not to have been transcendently virtuous.* It should not be objected, that the sons of those with whom partition was formerly made, would not only take the shares formerly allotted, but also receive part of the wealth reserved by the paternal grandfather, whilst the son of a son born after partition would only receive a share of the wealth so reserved by his grandfire, which would be an unjust disparity. It must unavoidably be admitted : without express authority of law, no inference can be established from *apparent* disparity. Other authors contend, that the law should be so expounded *. Such is the succession of a brother's son.

VII. On failure of him, the son of a nephew shall inherit, by the text of YÁJNYAWALCYA (CCCXCVIII) ; for kinsmen related by the funeral cake are determinately intended by the terms kindred sprung from the same original stock ; and the succession of the nearest *sapinda* is ordained by the text of MENU.

CCCCXXXIV.

MENU :—To the nearest *sapinda*, male or female, after him in the third degree the inheritance next belongs ; then, on failure of *sapindas*, and of their issue, the *samánódaca*, or distant kinsman †, shall be the heir ; or the spiritual preceptor, or the pupil, or the fellow student, of the deceased.

Whether proximity by birth, or by the relation of the funeral cake, be preferred, the paternal uncle is in both views nearer of kin

* The first seems the better opinion. T.

† *Saculya*.

kin than the grandson of a brother ; for he is son of the father of the *late* proprietor's father, and offers two funeral cakes, which he was bound to present ; and surely the paternal grandfather is nearer of kin, for he is father of the late proprietor's father, *would have* shared the funeral cake offered by him, and gives an oblation, which he was bound to present to the paternal great-grandfather. On this point JÍMÚTAVÁHANA remarks, the grandson of a brother bars the paternal uncle, because he offers a funeral cake to the deceased proprietor's father, who is chiefly considered ; but the great-grandson of a brother, though a descendant of the proprietor's father, is barred by the paternal uncle, because he is fifth in descent, and is *therefore* excluded from the oblation of a funeral cake.

Would not the brother of the paternal grandfather be in like manner heir, although a great-grandson of the same ancestor be living ; and would he not have an equal claim with the grandson of the paternal grandfather ? To this we reply, "nearest" here signifies proximate both by birth and by the funeral cake ; consequently, he who is nearest of kin to the late proprietor by birth and by the funeral cake, and who is most immediately connected both by descent and by oblations, shall take the property. It should not be objected, whence is this deduced ; and why is not proximity to the deceased proprietor solely propounded ? Nearness of kin is not the sole cause of succession, but connexion by the funeral cake does also co-operate ; and hence it appears that the benefits conferred are the grounds of the claim : now, the benefits conferred by the nearest of kin are more important than those afforded by one who is more distantly related ; remote kindred ought therefore to inherit only on failure of nearer kinsmen. Thus, since the son of a daughter confers benefits by the oblation of a funeral cake, and since it is recorded in the *Mahábhārata* that even his birth alone is beneficial to his maternal grandfather (CV), therefore the son of a daughter, conferring benefits on her father, is mentioned by JÍMÚTAVÁHANA as heir, on failure of the great-grandson in the male line. The order of *succession* by nearness of kin is proximate to the proprietor himself. Hence a person who confers benefits on the last possessor himself is first heir ; after him, the father of the late proprietor, being most near ; if he be dead, the persons who confer benefits on the father

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in the order of proximity to him ; on failure of these, the paternal grandfather and the rest comparatively near ; on failure of the ancestor, he who confers benefits on him. Accordingly the brother is sole heir, although a nephew capable of performing obsequies be living ; for the brother is nearest to the father. It should not be objected, that the son, as well as the father, is most near to the late proprietor ; and the great-grandson of that son, conferring benefits on him, might therefore claim the inheritance. He does not afford those benefits which the late proprietor was bound to confer on his ancestors.

Such being the case, is not the separate specification of the brother's son superfluous, since he is also suggested by the mention of kinsmen sprung from the same original stock ? Nor should it be answered, that he is separately mentioned for the sake of exhibiting a distinction, because there are various sorts of brothers and nephews. Were it so, the paternal uncle ought likewise to be separately mentioned, because that is equally true of him. To the question thus proposed the answer is, No ; for the brother is heir, on failure of the father and the nephew, in default of brothers ; thus succession follows the order of proximity, that is, the course of benefits conferred on the nearest of kin : it does not follow such an order of proximity, by which the paternal grandfather would be *first* heir on failure of the father ; nor has the paternal uncle an equal claim with a brother's son : he is therefore separately mentioned, for the sake of showing the order of succession in right of proximity by birth and the like, and for the purpose of denying a concurrent title of three descendants of the father, like that of three descendants of the proprietor himself, namely, his son, and his grandson, and great-grandson, *whose father and paternal grandfather are deceased*. Consequently, on failure of nearer claimants, including the daughter's son, the father is heir ; in default of him, the mother ; after her, the brothers ; if they be dead, a brother's son ; next, a brother's grandson in the male line ; and after him, the son of the father's daughter : such is the path indicated by JÍMÚTAVÁHANA. But SRÍ CRÍSHNA TERCÁLANCÁRA, author of a commentary on his treatise, contends, on the reason of the law, that the son of a son's daughter, and the son of a grandson's daughter, also claim the inheritance, because they confer benefits
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on their maternal great-grandfather, and on the father of a maternal great-grandmother. How can a daughter's son and the rest be considered as kinsmen sprung from the same original stock? Because the term is used in the sense of race or lineage *any-how descending* therefrom; and the son of a daughter mediately springs from that stock. It should not be objected, that, were it so, a sister and the rest might claim the inheritance, because they confer benefits by means of their son or other descendant. Their claim is obviated by a text above cited (CCCCXIII), and by BAUDHÁYANA, declaring women to be in general incapable of inheritance: this does not contradict the right of wives and the rest, which is propounded by special texts. So JÍMÚTAVÁHANA.

In the succession of brother's sons, a distinction between the whole and half blood must be understood, not in the case of daughter's sons. *But* some lawyers consider it as the opinion of JÍMÚTAVÁHANA, that, in the succession of the sons of the father's daughters and so forth, a distinction is taken between uterine and half sisters. Herein SRÍ CRĪSHNA TERCÁLANCÁRA does not acquiesce, because no law is found *expressly* declaring the participation of a maternal grandmother in the funeral cake offered to the maternal grandfather. Thus, on failure of the father's issue including daughters, the paternal grandfather is heir to the property, because he is nearest to the deceased; on failure of him, the paternal grandmother; such being the order of succession deduced from the text of MENU (CCCCXXIV), and from her participation in the funeral cake offered by her son's son (CCCCXXXII): and the reasoning holds good, that as a mother succeeds on failure of the father, so shall the paternal grandmother succeed in default of the paternal grandfather. On failure of them, their issue, including the son of a daughter, shall inherit; and in the succession of the paternal grandfather's son, grandson, and great-grandson, the same distinction must be admitted as before, in respect of their relation to the *late proprietor's* father by the whole or half blood, because the paternal grandmother shares the funeral cakes offered by her descendants, and the wife of a paternal grandfather does not share the oblations presented by the descendants of another wife of her husband: but no distinction is taken in the case of daughter's sons, because
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the maternal grandmother does not share the funeral cake offered by her daughter's son.

Next, on failure of issue of the paternal grandfather, including his daughter's son, the paternal great-grandfather is heir; in default of him, the paternal great-grandmother, because she shares the funeral cake offered by her great-grandson. This observation of JÍMÚTAVÁHANA and RAGHUNANDANA should be respected. It must not be argued, that, in the want of an express law, her succession is forbidden by the general maxim above cited (CCCCXIII). A man should not affirm, of his own authority, that no such special ordinance exists; for the ocean of the law has not been traversed. On failure of her, the descendants of the paternal great-grandfather, including his daughter's son as before, successively claim the inheritance. Here again a distinction must be admitted in the succession of the paternal great-grandfather's son, son's son, and grandson's son, according to their relation to the paternal grandfather by the whole or half blood; but not in the instance of his daughter's son. Such is the succession of kinsmen sprung from the same original stock.

VIII. On failure of them, a more distant kinsman is heir, by the text of YÁJNYAWALCYA (CCCXCVIII). In default of issue of the paternal great-grandfather, including his daughter's son, the maternal grandfather and the rest, who would have shared the funeral cakes which the deceased would have been bound to offer; and they who present funeral cakes to such ancestors inherit in the order of proximity, namely, the maternal grandfather, the maternal uncle, his son, and son's son; the maternal great-grandfather, his son, son's son, and grandson's son; the father of the maternal great-grandmother, his son, son's son, and grandson's son: on failure of the first respectively, the next in order is heir. Again; their daughter's sons have a title as givers of funeral cakes to the maternal grandfather, to his father, and to the father of this maternal great-grandfather; consequently, on failure of issue of the maternal grandfather, including his daughter's son, the descendants of the maternal great-grandfather, also including his daughter's son, successively take the inheritance. In this sense does YÁJNYAWALCYA use the term kindred. Such is the rule

approved by SRÍ CRĪSHNA TERCÁLANCÁRA, who follows the opinion of JÍMÚTAVÁHANA.

On failure of the giver of a funeral cake to be shared by the deceased, *and in default* of a son of the father's daughter, who gives three funeral cakes which the deceased was bound to offer to his own father and the rest, and so forth, the maternal uncle and others, who present oblations which the deceased was bound to offer to his maternal grandfather and the rest, claim the inheritance in the order of proximity. JÍMÚTAVÁHANA.

It should be here remarked, that the son of a son's and of a grandson's daughter, and the son of a brother's and of a nephew's daughter, and so forth, claim succession, in the order of proximity, before the maternal grandfather; for they also confer benefits by the oblation of funeral cakes. It must not be objected, that, were it so, the son of a grand-daughter would have a prior title, even though the father be living, in as much as he gives a funeral cake to *the deceased* himself. The oblations presented to the maternal grandfather and the rest are secondary, because they must follow funeral cakes offered to paternal ancestors; the son of a grand-daughter can have no claim, while the giver or sharer of a principal oblation exists. Nor should it be objected as a consequence, that the son of the late proprietor's daughter, or of his father's daughter, and so forth, could have no title, if any kinsman within the degree of a *śapinda* were living. The *Mahābhārata* showing that a daughter's son procures advantage even by his birth alone (CV), it appears that he does confer important benefits. SRÍ CRĪSHNA TERCÁLANCÁRA concedes to this opinion. Such is the succession of maternal kindred.

IX. On failure of them, a distant kinsman allied by family (*śaculya*) is heir by the text of MENU (CCCCXXXIV). "A kinsman of the same family" is the father of the paternal great-grandfather and his issue, and so forth, and is called *śamānódaca*: such kinsmen claim the inheritance in the order exhibited. So JÍMÚTAVÁHANA.

They who are partakers of the rice and clarified butter wiped off the hand, with which the funeral cakes have been offered, are *śaculyas*: such is the meaning. JÍMÚTAVÁHANA expounds the text of BAUDHAYANA (CCCXCVII), three persons ascending

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from the father of the paternal great-grandfather, and three descending from the son of the great grandson, do not participate in the same funeral cake, and are therefore pronounced kinsmen allied by family, and sharing divided oblations.

It should be noticed, that among the *sapindas* rendered impure by reason of a dead kinsman, three are also considered as such in respect of inheritance, and three as *śaculyas*.

CCCCXXXV.

The fourth person and the rest share the remains of the oblation wiped off *with* *cus'a grass*; the father and the rest share the funeral cakes; the seventh person is the giver of oblations; the relation of *sapindas*, or men connected by the funeral cake, extends *therefore* to the seventh person, or *sixth degree of ascent or descent*.

In the first place, the son of the great-grandson is heir, because he offers the remains of the funeral cake to the proprietor, to his father, and to his grandfather; next the grandson of the great-grandson, and after him the great-grandson of the great-grandson in the male line; on failure of these, the paternal grandfather's paternal grandfather, because he *would have* shared the remains of the funeral cake wiped off by the proprietor for the sake of ancestors; if he be dead, his son and other descendant to the third degree have successive claims: on failure of these, the daughter's son of the paternal grandfather's paternal grandfather, and other givers of a funeral cake in the triple set of oblations, inherit in order; in default of them, the son, grandson, and great-grandson of the great-grandson of the grandfather's grandfather in the male line, have successive claims as givers of the remains of funeral cakes to the paternal grandfather's paternal grandfather: on failure of them, the paternal great-grandfather's paternal grandfather is heir; if he be dead, his son, grandson, or great-grandson in the male line, his daughter's son, the son of the great-grandson in the male line, and the son of that great-grandson's son, and the son of this last-mentioned descendant, have

successive claims as before ; on failure of them, the paternal great-grandfather's paternal great-grandfather, his son, grandson, and great-grandson, his daughter's son, the son, grandson, and great-grandson of his great-grandson, similarly inherit in order : on failure of all these, the *samānōdacas*, or persons connected by an equal oblation of water, have a right to the inheritance. Now the relation of *samānōdacas* extends to the fourteenth person, by the following text :

CCCCXXXVI.

But the relation of *samānōdacas*, or those connected by an equal oblation of water, ceases with the fourteenth person.

CCCCXXXVII.

VRĪHASPATI :—On failure of them, uterine brothers, or brother's sons, paternal and maternal kinsmen, pupils, or learned priests, are entitled to the wealth of the deceased :

2. If a man die leaving no issue, nor wife, nor brother, nor father, nor mother, let all kinsmen, related by the funeral cake *in equal degree*, divide his inheritance in due proportions.
3. But half the collected wealth should be first set apart for the benefit of the deceased, and carefully appropriated to his monthly, six-monthly, or yearly obsequies.
4. Where many claim the inheritance of a childless man, either paternal or maternal, or more distant kinsmen, he who is the nearest of them shall take the estate.

Let half the estate be set apart to defray the obsequies of the deceased. Such is the sense.

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Among these, the eighth ancestor, and his son, grandson, great grandson, daughter's son, and the rest, as far as the fourteenth in descent counted from the eighth ancestor, successively claim the inheritance: the same must be understood in respect of the ninth ancestor and the rest; for nearness of kin and superior benefits are entitled to respect in every case. Men connected by equal oblations of water are allied by family; and on failure of such kinsmen *as partake of the remains of funeral cakes*, those who are connected by equal oblations of water are heirs, as suggested by the term "kinsmen allied by family;" for it is so remarked by JÍMÚTAVÁHANA. Such is the succession of kinsmen.

X. On failure of them, the spiritual preceptor is heir; if he be dead, the pupil; by the text of MENU (CCCCXXXIV).

JÍMÚTAVÁHANA.

In default of an order of *succession* suggested by the sense or terms of the text, the order suggested by the *literal* reading is respected: such is his notion. The word kinsman or connexion, as employed by YÁJNYAWALCYA (CCCXCVIII), must include the spiritual preceptor: there is consequently no deficiency in the text of YÁJNYAWALCYA. But others contend, since the spiritual preceptor stands in the place of a father, and the pupil in that of a son, therefore the spiritual preceptor inherits only on failure of the pupil. That is futile; for a similar reading occurs in the texts of BAUDHÁYANA and others, and YÁJNYAWALCYA declares, that a fellow student in theology takes the succession on failure of the pupil (CCCXCVIII).

CCCCXXXVIII.

BAUDHÁYANA:—On failure of kinsmen connected by the funeral cake, kinsmen allied by family shall inherit; in default of them, the spiritual preceptor, the pupil, or the priest hired to perform sacrifices, shall take the inheritance; and lastly, on failure of them, the king.

The term spiritual preceptor (*āchārya*) signifies him who invests the pupil with the sign of his class, as expressed in the text.

CCCCXXXIX.

He who girds the pupil with the sacrificial cord, and instructs him in the *Vēda*, is called an *āchārya*.

SRI CRĪSHNA TERCÁLANCÁRA concurs in this exposition, A fellow student in theology is he who studies the *Vēda* under the same preceptor. In default of him, descendants from the same ancient Sage claim the succession; on failure of them, men sprung from the same branch of a venerable stock, by the text of GÓTAMA (CCCCXL). So JÍMÚTAVÁHANA.

CCCCXL.

GÓTAMA :—Let those kinsmen take the inheritance who give the funeral cake, *who offer the remnant and water only*, who are descended from the same holy Sage, or, *lastly*, who spring from the same company of *Rīshis*.

But some hold, that the spiritual teacher and the rest could only inherit on failure of descendants from the same branch of a venerable stock or company of *Rīshis*, in conformity with the order of *succession* stated in the text of GÓTAMA; and there is no difficulty in comprehending kinsmen descended from the same holy Sage, or from the same company of *Rīshis*, in the texts of YÁJNYAWALCYA, VRĪHASPATI, and BAUDHÁYANA, under the terms “distant kinsmen,” and “allied by family:” as the phrase, “kinsman allied by family,” which is used by MENU (CCCCXXXIV), is acknowledged by JÍMÚTAVÁHANA to include the *samānōdacas* or kinsmen connected by equal oblations of water, so may the term be similarly extended in the present instance also, agreeably to the coincidence of the text of GÓTAMA. That opinion is questionable.

Others contend, that the stipendiary priest is heir immediately after the pupil, in preference to such distant kinsmen, by the text of BAUDHÁYANA (CCCCXXXVIII); and he ought to have

have the first title, because he was more immediately connected with the deceased, than the fellow-student in theology.

But MISRA says, the succession may be thus briefly stated: the son is *first heir*; on failure of him, the son's son; in his default, the great-grandson by males: if no such issue be left, the virtuous wife; on failure of her, the daughter; after her, the mother; if she be dead, the father; for want of him, the brother; in default of him, his son; on failure of the nephew, the *sapinda* nearest of kin to the deceased; after him, the more distant *sapindas* in order; if there be none such, the nearest *śaculya*, or kinsman allied by family; next, the more distant *śaculyas* in order; if there be none, the daughter's son; in default of him, the mother's family and the rest; on failure of all *other* heirs, the king, excepting the property of a *Brāhmana*; but in the case of wealth left by a priest, another honest *Brāhmana* is alone entitled to take the inheritance.

On failure of persons descended from the same primitive stock, a kinsman *in general* is heir; and by that term is meant a relation of the deceased himself, of his father, or of his mother.

CCCCXLI.

The sons of his own father's sister, and those of his own maternal uncle, must be considered as his own kinsmen.

In like manner there are kinsmen of the father and of the mother, such as their father's sister's sons, mother's sister's children, and maternal uncle's issue; these take the succession in order, as MISRA also observes. Consequently these are comprehended in his recapitulation, by the terms, "on failure of him, the mother's family and the rest."

Here authors deduce from the form of succession delivered by JĪMŪTAVĀHANA, that, on failure of kinsmen allied by the funeral cake, or by family *name*, the son of the father's maternal uncle, or of the father's sister, or of the mother's maternal uncle, or of the mother's sister, are likewise heirs. That is not accurate; for, since these are inferior to the father's maternal grandfather,

and mother's maternal grandfather and others, it is improper, without the authority of express law, to affirm the title of the father's maternal uncle's son and the rest; and the word (*bandhu*), being taken in its accepted sense, obviously signifies the kinsmen of the proprietor himself; and their title is in effect thereby established: this we hold reasonable.

On failure of heirs, including kinsmen sprung from the same branch of a venerable stock, the succession devolves on *Bráhmanas* by the text of MENU.

CCCCXLII.

MENU:—On failure of all those, the legal heirs are such *Bráhmanas* as have read the three *Védas*, as are pure in body and mind, as have subdued their passions; and they must consequently offer the cake: thus the rites of obsequies cannot fail.

“Have read the three *Védas*,” have studied all the *Védas*.

“Thus the rites of obsequies cannot fail,” that is, rites which would be lost by *the estate* being enjoyed *without performing obsequies for the deceased*, being completed in consequence of the transfer of *that* duty to another by the descent of the property to a *Bráhmana*, do not fail.

JÍMÚTAVÁHANA.

Thus the rites, namely the obsequies of the deceased proprietor, cannot fail.

CULLÚCABHATTA.

Others explain the text, on failure of heirs, including kinsmen sprung from the same branch of a venerable stock, since the wealth of the deceased goes to *Bráhmanas*, the king, pursuing proper conduct, does not violate justice.

Since it must *at all events* be said “on failure of these,” therefore *the word* all, as here used by MENU, must be intended to intimate the right of *all* heirs before mentioned, including men sprung from the same branch of a venerable stock or company of *Rishis* and the rest. Such is the opinion of CULLÚCABHATTA.

The want of heirs descended from the same holy Sage, or from the same company of *Rishis*, and the failure of *Bráhmanas*, must be

be understood *to be the non-existence of any such person* in the same town, else the escheat to the king could never take place.

JÍMÚTAVÁHANA.

The falling of *estates* to the sovereign is mentioned in a contiguous sentence. MENU declares, that, on failure of virtuous *Bráhmanas* residing in the same town, the inheritance of a *Cshatriya* and the rest shall escheat to the king.

CCCCXLIII.

MENU :—The property of a *Bráhmana* shall never be taken *as an escheat* by the king ; this is a fixed law : but the wealth of the other classes, on failure of all *heirs*, the king may take.

“ On failure of all heirs,” including honest *Bráhmanas*. “ The other classes ;” other than the sacerdotal tribe ; namely, the military class and the rest. But the wealth of a *Bráhmana* must never be taken by the king : consequently, on failure of honest *Bráhmanas*, he must give the property of a priest to *Bráhmanas* in general. Such is the notion of CULLÚCABHATTA. The wealth of other classes, in default of heirs including kinsmen sprung from the same branch of a venerable stock, the king should give to honest *Bráhmanas* ; on failure of them, he may take it himself as an escheat. Such is the opinion of JÍMÚTAVÁHANA.

But MISRA and the rest hold, that the first text of MENU (CCCCXLII) relates to *the property of Bráhmanas*, but the wealth of *Cshatriyas* and the rest shall be taken by the king alone. Such being the rule of decision, why may he not likewise take the estate of a priest ? To obviate this doubt, the legislator first ordains, that the property of a *Bráhmana* shall not be seized by the sovereign. Accordingly, BAUDHÁYANA declares the taking of holy property reprehensible in a king.

CCCCXLIV.

BAUDHÁYANA :—Holy property, unduly appropriated,

ated, kills a son and a son's son ; for it destroys like the most exalted poison : therefore the king shall on no account take the property of a *Bráhma*na.

“ Destroys a son and a son's son ;” kills them also. The property of a *Bráhma*na is indeed the most deadly poison to the sacrilegious spoiler. The *Retnácara*.

Must it not be affirmed, that this text shows it highly reprehensible to take wealth from a *Bráhma*na by force, fraud, or the like, but not so to take it without violence as an *escheat* ? No ; for the text of *DÉVALA* is explicit.

CCCCXLV.

DÉVALA :—In every case the king may take the wealth of a subject dying without an heir, except the estate of a priest ; for the property of a *Bráhma*na dying without an heir must be given to learned priests.

“ Heir ;” taker of inheritance : the term is regularly derived in a dative sense.

CCCCXLVI.

VRĪHASPATI :—The king takes as an *escheat* the wealth of those *Cshatriyas*, *Vais'yas* and *Súdras*, who leave no son, nor wife, nor brother ; for he is lord of all.

In this text, by declaring that he may take the wealth of *Cshatriyas* and the rest, it is intimated that the property of a *Bráhma*na shall not be taken.

CCCCXLVII.

CCCCXLVII.

SANC'HA and LIC'HITA :—The property of a learned priest descends to *Bráhmanas*, not to the king ; wealth consecrated to the gods, or allotted to priests, must not be seized by the sovereign, nor a deposit open or sealed, nor wealth regularly inherited, nor the property of infants or women : thus the *Véda* expresses,

“ The inherited property of a woman must not be seized by the king, nor *acquired* effects of an infant, nor the wealth of a woman received in the six modes of acquisition, nor the patrimony of infants.”

The term which occurs in this text (*parishad*) signifies a *Bráhmana*. The *Viváda Retnácara* and *Viváda Chintámeni*.

“ Deposits” and the rest, are terms employed indefinitely : hence the property consecrated to the gods, or allotted to priests, must on no account be taken by the king, unless as a fine or the like. A sealed deposit is a distinct sort of bailment, deposited under seal. “ Wealth regularly inherited” alludes to patrimony ; it is property which has descended to the possessor from another. So the *Madana Párijáta* and *Retnácara*.

The seizure of a *Bráhmana's* property being forbidden in these texts, on whom shall the estate of a *Bráhmana* devolve ? This question arising, and the words of DÉVALA (CCCCXLV) bearing the same import, the text of MENU (CCCCXLII) must relate to the sacerdotal class only. Consequently, on failure of heirs, including kinsmen sprung from the same branch of a venerable stock or company of *Rishis*, the estate of a *Bráhmana* descends to learned priests, and the property of any other person escheats to the king ; the wealth of the military and other classes does not go to learned priests. Such is the result. Accordingly, the text of NÁREDA also exhibits the right of the king to the escheat, on failure of daughters and the rest, not in default of heirs including priests.

CCCCXLVIII.

CCCCXLVIII.

NÁREDA :—On failure of daughters *the heirs* are, kinsmen allied by family, more distant kindred, and men who claim the same origin *with the deceased*; on failure of all *these*, the property escheats to the king,

2. Excepting the wealth of a *Bráhmaṇa*; but a king, attentive to his duty, shall allot a maintenance to the wives of the deceased: this is declared to be the rule of inheritance.

Kinsmen allied by family are sons of paternal uncles and the rest. Men who claim the same origin are persons belonging to the same tribe. But all this supposes the widow to be deficient in good qualities. The *Retnācāra*.

By “persons belonging to the same tribe,” it is not meant that any *Cshatriya* is heir of a *Cshatriya*, and any *Vaiśya* of a *Vaiśya*; for that would be an unprecedented construction: but it must be understood, from the coincidence of the text of GÓTAMA (CCCCXL), that ‘similar origin’ intends similarity of descent from a holy Sage or from a company of *Rishis*. MISRA and the rest thus expound the law.

“This supposes the widow to be deficient in good qualities;” that is, the wife left by a *Cshatriya* or other man of inferior class: but in the case of a *Bráhmaṇa*’s widow deficient in good qualities, the meaning is, let the king, levying it on the heirs, give her a maintenance. VISHNU also propounds the right of the king to the escheat, on failure of descendants from the same company of *Rishis* with the deceased; for his expression “on failure of a fellow student” (CCCCXVII) must be taken in a comprehensive sense, from the coincidence of other texts.

It should not be argued, because the ordinances of MENU prevail over all other codes, therefore must the texts of other Sages be reconciled with that which is propounded in his institutes: *and*, for the sake of coincidence with his precept (CCCCXLII), the right of the king mentioned in other texts takes effect only

on

on failure of honest *Bráhmanas*. There is no difficulty in explaining the text of MENU (CCCCXLII) in this sense. VRĪHASPATI pronounces that to be of no authority which contradicts the sense of his ordinances ; and it is consistent with just reasoning to infer, that, as that exposition of a law which is most conformable with reason prevails, when two interpretations of it are found in competition, so the exposition of a law of MENU, which coincides with the text of another ancient Sage, shall prevail when two interpretations of it are proposed. Consequently, the term “all” in the second text of MENU (CCCCXLIII), and the word “heir” employed by CULLÚCABHATTA in expounding that term ‘on failure of the heirs above mentioned,’ signify all heirs, including persons sprung from the same company of *Rishis*, but not including *Bráhmanas unallied to the deceased*. Authors thus expound the law. Of these two opinions one only should be followed.

If other *Bráhmanas* refuse to take the inheritance, or if there be no *Bráhmanas*, it must in this case be thrown into the water, in like manner as has been ordained by NÁREDA (Book I, v. CCXXXI).

The effects of an infant, and those belonging to a woman, must not be retained by the king, even though they have fallen into his possession (CCCCXLVII) : SANC’HA and LIC’HITA themselves cite the authority of a precept, “thus it is expressed,” that is, the *Véda* declares : this must be supplied. “The property of a woman ;” effects belonging to her ; the inheritance of her husband, *which has devolved on her*, and so forth. “The effects of an infant ;” property any-how acquired by a minor, having been given to him by any person whomsoever. Some lawyers say, the last part of the text explains the property of a woman and effects of an infant ; and this relates to the king’s own wife, sister, and the rest ; but of other women, even the inheritance or the like must not be taken by him : this will subsequently become manifest. “The six modes of acquisition ;” received before the nuptial fire and so forth.

CCCCXLIX.

MENU :—The king should guard the property which descends to an infant by inheritance, until he return from the house of his preceptor, or until he have passed his minority.

Wealth which descends to an infant by inheritance, and becomes the property of the minor, let the king guard ; that is, let him protect it from the *other* heirs. *The Retnâcara.*

Consequently the meaning is, let him act in such a manner that other heirs may not take the whole, defrauding the infant, who is incapable from non-age of conducting his own affairs ; or the sense may be, let him commit the share of the minor in trust to any one coheir or other guardian. “ Until he return from “ the house of his preceptor ;” this alludes to the three *first* classes, for persons of those tribes are not qualified to conduct their own affairs before they return home. “ Or until he have past his minority ;” this alludes to the servile class : a young man has past minority when his age is not less than sixteen years, (*that is, when he has completed his fifteenth year.*)

CCCCCL.

VISHNU :—The king should guard the property of an infant, and the effects of the husband and wife *in the absence of the husband.*

CCCCCLI.

SANC'HA and LIC'HITA :—Let the king protect the effects of infants who are incapable from non-age of conducting their own affairs, and the goods belonging to widows of learned priests and of valiant

liant foldiers ; but effects of which there are no owners efcheat to the king.

The king muft guard the property which devolves on the wives of learned priests and of valiant foldiers, by the abfence or departure of the prieft and the foldier. Such is the expofition delivered by CHANDÉSWARA.

CCCCCLII.

BAUDHÁYANA, treating of the fucceffion of fons :—

Their fhares, if they be incapable from non-age of conducting their own affairs, let the king keep carefully guarded, together with the accumulation on thofe fhares, until the minors arrive at *years of difcretion*.

“ With the accumulation ;” with the increafe. “ Carefully guarded ;” well protected. “ Until ;” in the fense of reftriktion : before they attain their feventeenth year. The *Retnácara*.

Confequently, if the proprietor be dead, and his fons choofe to make a partition of his eftate, the king being informed by the minor, or by another kinfman, or by his own officer, muft himfelf, or through fome perfon appointed by him, keep the fhare of the minor until he attain the age of fixteen years : in fome inftances it fhould be laid out for increafe. In like manner, the expences and other matters fhould be fuperintended by the king himfelf, or by a perfon appointed by him. Thefe and other points may be argued from the reafon of the law. Again, if the minor have no brother, the whole eftate fhould be nevertheless guarded in a fimilar manner ; for the reafon of the law is the fame. Thus the property of a woman, and the goods of a minor, falling into the king’s power, fhould not be taken by him as owner : this has been already noticed. But it fhould be here remarked, that the property of a minor fhould be entrusted to heirs and the reft *appointed* with his concurrence ; or, if the infant be abfolutely incapable of difcretion, with the confent of a near and unimpeachable

unimpeachable friend, such as his mother and the rest. CÁTYÁYANA declares, that kinsmen must guard the property of an infant.

CCCCCLIII.

CÁTYÁYANA:—Let all the coheirs guard the share which belongs to an absent parcener;

2. But if a man die, leaving an infant son, his wealth must be preserved entire by his kinsmen; and they may divide it in due proportions, after the minor has passed adolescence.

If one who has an infant son die, his property must be preserved by the kinsmen or brethren of the minor; it must not be immediately distributed: but they may divide the estate after he has passed adolescence. Such is the meaning of the phrase. Consequently, the share of a minor must be preserved during his adolescence by kinsmen, like the allotment for an absent parcener; for the reason of the law is the same: but before his adolescence partition is not proper. In like manner, the king, or the kinsmen appointed by him, should guard the minor's property received from his brothers as his share of the inheritance. Here kinsmen signify relations in the male line, or, on failure of them, a sister's or daughter's son, or other near kinsman *of the father*. In practice, a mother is guardian of a minor, and of his property: and that is proper, if she be capable *of protecting the ward*; but being a woman, she is under the control of her husband's mother and the rest: still the effects of the widow and of the grandson must be guarded; and since the mother-in-law is a woman, she requires the aid of another kinsman; and he should be selected with the concurrence of the paternal grandmother, and be approved by the king; for the paternal grandmother best knows who among the kinsmen is skilled in the conduct of affairs, and the king is an universal superintendant: and if the widow be old and capable of governing her own conduct, there is no harm in permitting the estate to be guarded by a kinsman selected by her; for it is only directed that a widow and the rest shall guard the property

property by any *possible* means. A contest arising between the mother-in-law and the widow, if the king, residing at a great distance, cannot accurately distinguish their good and bad characters, then indeed any person may be appointed by the king's own selection. This method, established by lawyers on their own judgment, is consistent with the reason of the law.

CCCCCLIV.

VRĪHASPATI:—A brother, a brother's son, a *sapinda*, or a pupil, performing rites with a funeral cake *for the deceased*, shall thence obtain increase of *prosperity*.

Consequently, he who takes the estate of the deceased shall perform his obsequies; but if one be heir to the estate, and another be qualified to perform the obsequies, he must give a sufficient sum, and cause the rites to be celebrated by him who is qualified to perform them.

CCCCCLV.

SMRĪTI:—He who takes the estate shall perform the obsequies.

The word *śrādd'ha* here signifies the obsequies performed exclusively for a person recently deceased.

The *Pracāśa* and *Retnācara*.

But others contend, on the text of VRĪHASPATI above cited (CCCCXXXVII 3), that he who takes the estate of the deceased must also perform the annual *śrādd'ha*; and such is the practice with some persons. That is wrong; for there is no difficulty in considering the word "annual" as relating to the first anniversary obsequies. Another text does relate to that subject: "He who takes the estate, and fails in performing the *last* duties for the deceased, is *criminal*, &c."

How can the spiritual preceptor, who takes the estate of a *Gshatriya*, perform his funeral rites, since that is forbidden?

CCCCCLVI.

The priest who performs funeral rites for persons of an inferior tribe, is degraded to that class in the present world and in the next.

No ; for this text relates to brothers unequal in class : and the difficulty is obviated by saying, the spiritual preceptor may accomplish the funeral rites by the intervention of a qualified person equal in class with the deceased.

CCCCCLVII.

VISHNU :—He who is heir to the estate is the giver of funeral cakes.

SECT. II.—On the Inheritance of Anchorites and Devotees.

The subject of succession to the property of a householder being concluded, YÁJNYAWALCYA propounds succession to property which belonged to a man who had entered into an order of devotion.

CCCCCLVIII.

YÁJNYAWALCYA :—The heirs of a hermit, of an anchorite*, and of a student in theology, are, in *inverse* order, the spiritual teacher, the virtuous pupil,

* I follow Sir WILLIAM JONES in applying the name of hermit to the *Vānaprastha*, and anchorite to the *Yati* or *Sannyāsi*. See translation of MENU, Chap. VI. T.

pupil, and the brother by religious duties being pupil of the same preceptor.

“ Being pupil of the same preceptor ;” having the same spiritual teacher. He is brother by religious duties, and pupil of the same spiritual father : the apposition is in the form called *car-madhāraya*. “ In order ;” that is, in the inverse order : hence the spiritual preceptor shall take the property of the perpetual student in theology ; the virtuous pupil, versed in the study of revelation concerning the supreme soul, and in preserving that sacred science, *shall take* the estate of an anchorite ; and the brother by religious duties, being pupil of the same spiritual father, takes the wealth of a hermit. “ The brother by religious duties” is one familiarly known as brother of the deceased ; the subsequent term (*ēcatirt’hi*) may signify, belonging to the same order of devotion.

If it be alleged, that this contradicts the text of VASISHT’HA (CCCXXXVIII) ; it may be nevertheless reconciled, by supposing effects any-how possessed. CHANDÉSWARA.

VACHESPATI MISRA concurs in the same exposition. Another author has stated much, which was obvious, concerning the supposition of effects any-how possessed ; for example, the hoard of a hermit for the performance of annual rites, and the trusts of an anchorite or the like.

But JIMÚTAVÁHANA considers the last term of the text (*ēcatirt’hi*) as distinct from the rest. Consequently, the spiritual brother shall take the property of a hermit ; the virtuous pupil, the effects of an anchorite ; and the spiritual preceptor, the wealth of a student in theology : on failure of them, one who belongs to the same order is heir. The perpetual student in theology is he who, having abandoned his father and the rest, resides for life in the family of his preceptor, remaining strictly obedient to him. But the property of a temporary student in theology shall be taken by his own father and the rest. Such a student in theology, according to the learned, is he who remains near his father and the rest of his kindred.

CCCCLIX.

VISHNU:—The spiritual preceptor shall take the property of a deceased hermit.

It should not be argued, from the coincidence of this rule of VISHNU, that the direct order is meant in the preceding text, and that the inverse order need not be supposed; were it so, the consequence would be incongruous, since the spiritual brother would be heir of perpetual students in theology, although their spiritual father were living. Nor should it be argued, that here, as in the case of succession to the estate of him who leaves no son, the order may be such that the person last mentioned is heir on failure of the preceding. The anchorite can have no spiritual father. It must be therefore understood, that the spiritual father is first heir to the wealth of a hermit; on failure of him, the spiritual brother; as in the succession to the estate of a *worldly* man who leaves no male issue. According to JÍMÚTAVÁHANA, the insertion of both terms, spiritual brother, and pupil of the same tutor, or devotee of the same class, is useless; for both senses are conveyed by the single term spiritual brother.

Again; terms are correlative in order then only when they correspond in number; as in the example, "The charms of the lyre, of the wreath of jasmine, of the blue lily, are surpassed by her delightful voice, her smiles, and her enchanting glance:" but here the number is unequal. This objection is answered by saying, that, although correlative order be only acknowledged in the instance of terms equal in number, the sense shows that the last, not a preceding term, must be rejected as not included in the correlative order. The sense exhibited by construction is subordinate to the implied purport: as in the example, "CHAITRA is armed with a sword and wears ear-rings, and MAITRA does so likewise;" the wearing of ear-rings is alone suggested by the term "so," because the implied purport points thereto: and thus in other instances.

As for the remark, that as the word pupil, in the instance of the anchorite, signifies him who duly learnt the forms enjoined to that order, so the term spiritual preceptor may signify him who

who taught those forms : and the spiritual father is therefore first heir of hermits and the rest ; after him, the pupil ; after him again, the spiritual brother ; and, lastly, one belonging to the same order : and such may be the successive right of inheritance. That argument is erroneous ; for it is inconsistent with approved usage.

SECT. III.—*On a Second Partition, after Re-union of Parceners.*

In treating of succession to the property of him who has no son, it has been said, a re-united parcener is heir of a re-united one :” now, if two coheirs who have renewed coparcenary, make a second partition, how is it regulated ? On this point MENU and VISHNU propound a text above cited : “ if brethren, once divided, and living again together as parceners, make a second partition, the shares must in that case be equal ; and the first-born shall have no right of deduction ” (CCCCVI 1).

Here “ equal shares ” suppose the re-union of brothers belonging to the same tribe : but if a *Bráhma* and a *Cshatriya* become re-united, their allotments must be understood to follow the proportions before mentioned ; for this text is merely intended to deny the right of deduction which had been ordained in favour of the first-born.

JÍMÚTAVÁHANA.

From the concurrent import of the text of VRĪHASPATI (CCCCVII 1), does it not appear that a second deduction in right of seniority is denied when a second partition is made*, not the original right to a larger portion which had already gained validity ? No ; for, whether they be father and son, brothers, uncle and nephew, or the like, they possibly may be undivided in respect of wealth acquired by the father, paternal grandfather, or the like : accordingly the first-born cannot have separate property in the *identical* portion formerly received on account of seniority, because a common right to all effects is vested in both

N N 3

re-united

* See the various reading of this text in a subsequent page. T.

re-united parceners by the avoidance of the several rights proclaimed by a former distribution, since JÍMÚTAVÁHANA expresses, ‘ parceners, having made a partition, and afterwards ‘ living together in the same house as joint-housekeepers, after ‘ thus annulling partition, “ what is thy property is mine, what “ is my property is thine,” are said to be re-united.’ It should not be argued, that the term “ annulling partition ” only signifies obviating the mediate consequence of the characteristics of partition, not cancelling any several vested rights : were it so, since it is not a maxim that lots will fall on the same chattels *as before*, and since the lots cast may ascertain a right to other goods, while the original right to the former effects is retained, both re-united parceners might have property in almost every chattel after the second partition.

Nor should it be objected, were it so, how could the shares formerly ordained for a *Brāhmaṇa* and a *Cshatriya* remain in a *second distribution* ? Since the text concerning partition among brothers of various classes may be applicable to the second as well as to the first distribution, and since it is not contradicted by any other text, it should be so established. Thus the meaning of the phrase, “ their allotments follow the proportions before ordained,” is, that the division shall be made in that proportion and mode which were observed in the first instance ; for this is no less a partition *than the former distribution was*.

But MISRA thus explains the terms of the text (CCCCVII 1); although seniority exist, entitling the first-born to a greater portion, still that greater allotment shall not be given : the same legislator propounds an exception in respect of wealth acquired by learning. The commentator’s meaning is this : a larger portion again received in right of seniority by birth or the like, under the text of VRĪHASPATI (XLV), because this is also a partition of property, is forbidden in this second distribution : since the claim of the first-born to the larger portion, formerly received by him, had been already obviated*, the result is the same ; the only difference consists in the *commentator’s* display of learning. As for
the

* Great obscurity pervades the whole argument. The eldest has no right to a second deduction : nor does he retain, during renewed coparcenary, his separate property in the identical effects which composed his former allotment in right of seniority ; but he receives, on a second partition, the equivalent of his original due. T.

the remark, that the same legislator propounds an exception in respect of wealth acquired by learning, that is not restricted to science; for the exception, which shall *now* be mentioned, in respect of a double share, must be considered as relating to acquisition in general. The legislator declares that the acquirer shall have a double share in the present instance, as in the original partition.

CCCCCLX.

VRIHASPATI:—But if one of the re-united brethren acquire wealth by learning or valour, or the like, two shares of it must be given to him *on a second partition*, and the rest shall have each one share.

By learning, or valour, or any other means of acquiring several property. The *Retnâcara*.

Consequently, the law promulged by VYĀSA for the first partition (CX), is extended to the second: the acquirer therefore has a double share, according to the *Retnâcara* and the rest, if the wealth were acquired by the simple exertion of learning or the like with supplies from the common estate and so forth; but if it be the acquisition of science technically so denominated by CĀTYĀYANA, the common estate not being used and so forth, the wealth thus acquired is the several property of the acquirer; and if supplies were received from the common estate and so forth, he who is equal or superior in learning has one share, and he who is inferior in knowledge is excluded from participation: if the wealth be acquired by agriculture or the like, without supplies *from the common estate*, it becomes the several property of the acquirer; with supplies, it is shared by all the parceners: this, which has been already explained, must be also understood in the present case.

But, according to JĪMŪTAVĀHANA and others, the acquirer shall have a double allotment, and the rest shall have each one share of wealth any-how gained with supplies from the joint stock and so forth; if the learning were acquired after a maintenance provided out of the common stock, all the parceners shall have the shares ordained for them, although the joint-property were

not employed during the acquisition of the wealth ; but, even though the common funds of support be not used during the acquisition of science, nor during that of wealth, they who are equal or superior in learning participate : if the money be earned without use of joint-property, through agriculture or the like, by *the labour of* a body nourished on the joint funds of support, it *nevertheless* becomes the several property of the acquirer, as before explained.

According to all opinions, the distribution is regulated by the use made of joint-property. What is received from a friend, or on account of marriage, or the like, is held as several property : the implied sense of the text of VRĪHASPATI must be considered as extending thus far, according to the circumstances of each case.

When partition is again made after the period of re-union, what share belongs to him who, being skilled in the means of acquisition, had gained much wealth previously to the former distribution, and who was therefore entitled to two shares at the time of dividing it ; and what proportion belongs to him who gained much wealth after the original partition ? If it be said, an equal share with the rest ; that is inconsistent with common sense : equality of allotment consisting *only* in the prohibition of a greater portion for the first-born, must be therefore established in the text above cited (CCCCVI 1). In like manner, an unequal distribution, after the re-union of brothers of various classes, is legal. A second allotment of a greater share to the first-born is forbidden by the text above cited (CCCCVII 1) ; the former right to a greater portion is not thereby denied, since it had already gained validity. Even on the reading approved by CHANDÉSWARA, (*punar vibhāga caranē tēshām jyaisht'byan na vidyaté*, if brothers again make a division of their joint-property, the first-born has no right to a larger portion ; instead of *tēshām vibhāga caranē punar jyaisht'byan na vidyaté*, if they, *who*, after separation, have become re-united through mutual affection, make a partition, seniority does not again prevail ;) the right of the first-born to a larger portion is only denied when a second partition is made.

It should not be argued, that the term “seniority” may here bear a general sense, because there is no authority for restricting its meaning in the present instance ; and that the term “again” must signify “but also.” The larger portion, already received in

right

right of seniority, cannot now be forbidden : and it is inconsistent with common sense, that he who contributed a greater sum *to the joint stock* when he became re-united, should receive back a less sum when a division is made ; and further, the case is similar to that of the acquirer of wealth, as above mentioned. Nor should it be argued, that, a common right to the whole property being vested in both re-united parceners, there is no authority for any subsequent unequal distribution. As wealth gained by partners in trade and adventure trafficking with unequal stock is distributed in proportion to their respective capitals, even though all are equally owners of the wealth thus acquired ; so, in this case likewise nothing prevents a similar inference. Accordingly MISRA denies the right of the first-born to a larger portion, on a second partition of joint-property, by remarking, ‘ although seniority exist, entitling the first-born to a greater portion, still that greater allotment shall not be given.’

Others say, the larger portion already obtained in right of seniority is not retracted ; for the text is intended merely to prohibit the deduction before ordained for the first-born : and the remark of JÍMÚTAVÁHANA is intended merely to forbid that allotment in right of seniority which had been before ordained, that is, enjoined or declared by legislators for the original partition.

VRĪHASPATI defines a re-united parcener (CCCCXXX). According to JÍMÚTAVÁHANA and the rest, re-union can legally take place among them only who are mentioned in the text, namely, father and son, and the rest. According to CHANDÉS-WARA and others, re-union may legally take place among all those, including the great-grandson, among whom partition can be made. Some hold that disunited sons and the rest have no claim of succession, if there be re-united sons or the like. In no case is the re-union of female heirs admitted.

If a man, having made a partition with his sons, and again residing with any one of them as a re-united parcener, die after begetting another son, this last-born child shall be sole heir of his estate, by the text of MENU (C1). “ He shall make a partition with the brethren who are re-united ;” that is, the re-united brethren shall receive their respective shares, and the son born after partition shall take his father’s allotment*. It should not be argued,

* According to this gloss, the text should be otherwise translated. T.

gued, as the meaning of the term "share," that the son born after partition shall divide *his father's allotment* with his re-united brothers. That would contradict the precept, "a son born after a division shall alone inherit the patrimony." Nor should it be objected, that this contradicts the precept "a re-united parcener is heir of a re-united one:" that relates to the competition of equal claimants. Nor should it be objected, that partition is proper, because the claim of a re-united parcener in right of renewed coparcenary, and that of a son born after partition in right of posterior birth, are both distinct claims. It is shown by a text formerly cited (C), that sons born before the distribution have no claim on the wealth retained by the father after partition, if a son born after it exist: and it is improper to restrict that text, unless common sense or express law oppose *its comprehensive import*; for re-united parceners have been enriched by their own shares, but the son born after partition has no means of subsistence besides his father's share.

If he who is re-united with another brother possesses any undivided property, on whom does the right thereto subsequently devolve? It goes to the re-united parceners only; for a text above cited (CCCCXXVI), shows that brethren who have renewed coparcenary exclusively inherit the wealth of a re-united brother, and this undivided property belonged to a re-united parcener.

The text of NÁREDA (CCCCXXXIII) is thus read by MISRA: "The vested share of re-united brothers is declared to belong exclusively to them; otherwise it shall go to their *mutual* heirs; or to others, if they leave no issue*." If there be no heir, whose claim is preferable to that of re-united parceners, the succession devolves on them, although there be a disunited claimant as near of kin; otherwise, that is, on failure of re-united parceners, the heritage goes to their *mutual* heirs, namely to the sons or other descendents of a re-united parcener. Of two coheirs, who have renewed coparcenary, if one die childless, after the demise of the other who did leave male issue, the sons of the re-united parcener inherit the estate: such is the meaning. If they leave no issue, that is, no son or other male descendent, it goes to others, namely to the widow and the rest. Consequently, in such a case,

* The difference of the reading is, *ató'nyat'bán's'a bhájas tu*, instead of *ató'nyat'hánans'a bhájab*.

the legal heirs of a re-united parcener shall alone take his inheritance; no others *shall take it*, neither disunited parceners nor their legal heirs. Some lawyers so expound the text.

The vested share of re-united parceners belongs exclusively to them; it appertains exclusively to re-united parceners: mentioned as grounds for showing, that, on failure of them, the succession devolves on others. Or it conveys a precept on the doubt whether all sons may claim partition, because the estate of the deceased was in effect wealth acquired by their father or by his ancestors; and because they are equally *his sons, and therefore heirs* by the texts of DÉVALA and the rest (V). Otherwise, that is, on failure of re-united parceners, *the succession devolves on* their heirs, that is, on their sons and the rest. If re-united parceners die, leaving no male issue, it goes to others, that is, to disunited coheirs. Such is the exposition approved by MISRA. It may also go to any others whomsoever, according to the circumstances of each case, conformably with the rules of decision above mentioned.

MISRA here observes, it is not the meaning of the first hemistich, that the same share which belonged to each at the time when re-union took place, shall be recognized and preserved from him when partition is again made: for, in a community of goods by re-union with half the former wealth, the phrase would bear a spiritual sense, if such were the strict rule.

In the *Párijāta*, the text is read, sharers of the wealth of others than these (*atō'nya dhanānśa bhājah*). But that is rejected, as differing from many copies.

The *Retnācara*.

As for what is said in the text of CĀTYĀYANA (CCCCXXVII), on the subject of one taking the heritage on failure of the other, the legislator limits the precept, by saying, "if they have no progeny;" the meaning is, because they reciprocally share their estates if they have no offspring.

MISRA.

"Leaving no issue" is an expression merely illustrative, comprehending one who leaves no wife or the like. Hence a re-united brother, or other coheir, has no right of inheritance, if he who has no son leave a widow: and thus the doubt is removed, whether all sons shall equally share the estate on the death of their father, who had made a partition with his children, and who was re-united with one of them, because the leaving no issue is stated as a ground of a distinction relative to re-union; for, taking the term

in

in a comprehensive sense, it must necessarily extend to brothers and the rest; else a re-united uncle would inherit the wealth of his re-united nephew, although a brother exist. Therefore, on failure of preferable claimants, those, among equal claimants, who were re-united with the deceased, inherit the wealth of a re-united parcener. Here again, in respect of brothers and the rest, a distinction subsists, founded on texts of law, and relative to the whole and half blood: thus also it is necessary to take the word "issue," in MISRA's definition, as signifying preferable claimant; for it is said, a disunited son has no claim if there be a re-united one. As for the argument, that the word "seed" in the text above cited (CCCCXXVII) obviously presenting the sense of offspring, it is consistent with just reasoning to consider the distinction relative to re-union, as implying the failure of offspring, there appears this objection to the argument; since it is a maxim, that, on failure of preferable claimants, those, among equal claimants, who were re-united with the deceased, have a title to inherit, the independent condition "excepting sons and the rest," is troublesome and groundless; for the term, "leaving no issue" may bear the sense above mentioned.

CHAP. IX.

ON

SUCCESSION TO FEMALES.

SECT. I.—*On the Property of Women.*

CCCCLXI.

NÁREDA :—On the death of the father let sons divide his estate, and let daughters share the wealth of their mother ; or, on failure of them, let their issue take it.

“ Paternal,” or parental in the text of **MENU** (IV), being derived from a term expressive of both father and mother, (the last being understood,) the estate of the father and that of the mother are meant.

CULLÚCABHATTA.

Consequently daughters and sons succeed to the estate of their mother. Such in effect being the sense, what sort of property left by her shall be taken, and by whom ? To distinguish this, the various sorts of separate property held by a mother are discussed. On this subject,

CCCCLXII.

MENU and **CÁTYÁYANA** :—What was given before the nuptial fire, what was given at the bridal procession,

cession, what was given in token of love, and what was received from a mother, a brother, or a father, are considered as the six-fold *separate* property of a *married* woman.

What was bestowed by any person whomsoever, before the nuptial fire, at the time of the marriage: “ what was given on the bridal procession ;” that is, a present following a bride when she is led to the house of her husband ; and what was given in token of love, that is, bestowed by her father-in-law, or other person whose affection is engaged by her good temper, probity, skill, and other good qualities. “ Six-fold ” is mentioned to except a less, not a greater number ; for a present given to a superseded wife, which is another sort of separate property held by a woman, is also mentioned by YÁJNYAWALCYA.

The *Retnâcara*.

CCCCLXIII.

YÁJNYAWALCYA :—What a father, a mother, a husband, or a brother, has given to a woman, what is presented to her before the nuptial fire, what she receives *to appease and console her* on the second marriage of her lord, are universally considered as her separate property.

When the bride is conveyed from the house of her guardian to the abode of her lord, what is then bestowed by her father-in-law and the rest is a present given on the bridal procession. So the *Mêd'hâtiti*. This should be also comprehended *in the enumeration of separate property* ; for the reasoning is equally applicable.

The *Retnâcara*.

CÁTYÁYANA explains the present given before the nuptial fire :

CCCCLXIV.

CÁTYÁYANA :—Whatever is given to women at the
time

time of their marriage before the sacred fire, *which is the witness of nuptials*, is denominated by Sages their property “given before the nuptial fire.”

“Whatever is given :” here the person who makes *the gift* is not her father, or other relation ; for, were such the meaning, it would simply intend “ what was received from a mother, a brother, or a father.” Therefore it means only what is given by any person whomsoever, whether he be or be not allied by blood. Accordingly it is said by the author of the *Retnâcara*, “ given by any person whomsoever at the time of her marriage.” What friends also give at the time of a girl’s nuptials, in token of respect to the damsel, is her *separate* property. As the practice subsists in this country for the friends of the bridegroom to give the woman some trifle in token of respect, so it appears that a practice subsists in some countries for the friends of the bride’s father to give the damsel some trifle.

The same legislator explains a present given on the bridal procession :

CCCCLXV.

CĀTYĀYANA :—What a woman receives from the family of her parents, while she is led to the house of her husband, is called the property of a woman “ given at her procession.”

What is given by any person whomsoever in honour of a bride going from the house of her father to the mansion of her husband, is a present given at her procession. Accordingly the author of the *Retnâcara* has said, “ a present following a bride.” What is given on account of a bride going in procession is given at her back ; for she goes before, and properly the gift follows her. Such is the popular language.

Does her procession to the house of her husband consist in going thither at the time of the nuptial ceremony, or at that of the *final* procession of both *bride and bridegroom to the husband’s house*, or at any other time ? On this point nothing has been said by

by the author of the *Retnâcara*. But MISRA affirms, 'at the time of the final procession of both *bride and bridegroom to the husband's house*.' On the other hand, JIMÚTAVÁHANA, not finding that presents are given by friends to a bride, while she is led from the house of her father to the abode of her husband, interprets the text otherwise; 'what a woman receives from the family of her father or mother, while she is led to the house of her lord.' It must be considered, that the same sense being deduced from the phrase, "what was received from a brother, or a mother, or a father," the separate mention of a present given on the bridal procession would be fruitless.

What was given *in token of affection* by her father-in-law and the rest. Such is the interpretation of "given," according to the *Retnâcara*. MISRA remarks on the three sorts of property bestowed by a mother and the rest, that the meaning is obvious. The agent in the phrase, "given in token of love," may be the family of her husband; "what was given to a woman by his family:" it may therefore comprehend what is received by a woman on the second marriage of her lord. "Mother" is a term illustrative of the family of her mother, and so is father illustrative of his family. "Brother" is again mentioned to denote his pre-eminence by the same rule by which two names of kine are at once used in a general and particular sense.

Thus, since there is no separate property of women different from those six sorts, it may be objected to the opinion delivered in the *Retnâcara*, that it was useless to say, '*the enumeration is intended to except a less number*.' By parity of reasoning, the same objection may be also made to what has been said by MISRA and others, "it is intended to except a less number."

CCCCLXVI.

CÁTYÁYANA:—Any thing which is given to a woman by the mother or father of her husband in token of affection, and that which is given in return of her humble salutations, is called wealth gained by loveliness.

"Loveliness"

“ Loveliness,” consists in good temper, skill in *feminine arts*, and the like. *A present in token of affection*, and what is given by the father or mother of her husband, to a woman endowed with good temper and other amiable qualities, and who humbly salutes their feet, constitute the third sort of exclusive property.

MISRA.

Since a present given through affection is separately mentioned by CĀTYĀYANA, does it not follow that a present given by her husband is not the same with one bestowed through affection? No; for her husband and others may also be included in the text, since the particle “or” is used indeterminately in the expression “by the mother or father of her husband:” and there is no difficulty in considering the last hemistich of the verse as a separate phrase; for the sense of the text is this, what is given by the mother of her husband, and by *certain* other persons, is bestowed through affection, and what is obtained by lowly salutations is acquired by loveliness. The whole cannot be taken as a single phrase, bearing this sense, “what is given by the mother of her husband, and by *certain* other persons, is a return for humble salutations, and that alone is called the acquisition of loveliness;” for one of the relatives would be unmeaning. It should not be objected, that a present given in token of affection alone constitutes the third sort of *exclusive* wealth; and that a gift to a superseded wife is not a present given in token of affection, because it is received by the woman when disposed to wrath and the like by reason of the second marriage of her lord. Still the present cannot be given without tenderness, for her husband is moved to affection by her assent to his second marriage; and the difficulty is removed, by considering the term “in token of affection” as merely illustrative.

YĀJNYAWALCYA explains a present given to a woman on the second marriage of her lord (LXXXVII). She, above whom a marriage is contracted, is a superseded wife (*adhibinnā*). So the *Retnācara*. *Adhi* is therefore used in the sense of above; and *bēdana*, in the sense of taking a bride, according to the literal meaning of the verb *bidri*, take. Consequently the second marriage of her husband is supercession of a wife; and a present received on the second marriage of her lord shall be so much only as is promised to console her for the supercession. “But if such wealth,

wealth, as is usually given to women, had been delivered to her, she is held entitled only to a moiety or part ;" that is, the sum promised shall be completed by wealth previously and subsequently bestowed. If a larger sum had already been given, some trifle must be delivered to fulfil the promise of a present.

So much only as is given to the wife who is now espoused, must be given to the wife who is superseded.

SRI CRISHNA TERCALANCARA.

The word "equal" signifies so much only as is expended on the second marriage. VIJNYANESWARA.

In the second* of these three expositions there is *this* defect: not she, but another woman, is the person to whom the sum promised is given ; and it would not be a present on supercession by the second marriage of her lord, since supercession is not the cause of giving that sum : neither is the second marriage the *immediate* cause of giving a present to the first wife. When the second nuptials have taken place, and nothing has been expended on them, since nothing would in that case be given according to this (*third*) opinion, the second marriage, jointly with the expence of it, is not the *immediate* cause of giving a present to the woman : her being the first wife is the sole cause. Thus there is no certainty in these two interpretations. It cannot be a positive precept, that the term "equal," though parity be always requisite, shall refer only to the amount expended or the like. Again ; if that which is given to a second wife endowed with pre-eminent qualities must also be given to the first wife, this would contradict common sense. A rule of practice should be formed on due consideration of these difficulties.

CCCCCLXVII.

VISHNU :—The property of a female is that which her father, mother, friend, or brother has given her ; what she received in the presence of the nuptial fire ; *on the bridal procession* ; or when her husband

* The manuscript has "first ;" but the objection is only applicable to the second. T.

husband took a second wife; what her husband agrees to be her perquisite; and what is received from his or her kinsman as a gift subsequent to the marriage.

It should not be argued, because more than six sorts of property are mentioned in this rule of VISHNÚ, that the text of MĒNU must necessarily be considered as an exception of the less number. Friends and the rest are comprehended in "the family of her father." "Received" (*upāgata*) may signify what is bestowed on account of her coming, that is, a present given on the bridal procession. The present received when her husband took a second wife, must be reconciled, in the mode above mentioned, *with one of the other sorts enumerated*. Her perquisite, and a gift subsequent, are in effect given by her husband and the rest.

CCCCCLXVIII.

CĀTYĀYANA:—What is received by a woman after marriage from the kinsmen of her lord, or from those of her parents, is called "a gift subsequent:"

2. But BHRĪGU gives the name of "subsequent gift" to any thing received by her after the nuptial ceremony, from her husband himself, or from her parents, through pure affection.

3. The trifle which is received by a woman as the price or reward of household labour, of using household utensils, of keeping beasts of burden, of watching milch cattle, of preserving ornaments of dress, or of superintending servants, is called her "perquisite."

Consequently, what is received after marriage from the family of her husband, mother, or father, and what is received from her husband himself, from her mother, or from her father, is a gift subsequent. Such is the explanation approved by JÍMÚTAVĀ-

HANA. To include a present given before marriage in the enumeration of several property, what was given by the mother, father, or brother, has been already mentioned. It should not be objected, that still the word "son" in the rule of VISHNU, as read by MISRA, ("that which her father, mother, son, or brother, has given her,") is unmeaning. That word may signify son by another wife of her husband.

JÍMÚTAVÁHANA reads the text of CÁTYÁYANA (cccclviii 1) "and so received from the family of her kinsman*." He adds this gloss: the word "kinsman" intends maternal uncles and others; for her father and the rest would be suggested by the term "her own family." On the other reading, which is followed in the *Retnâcara* and other works, "what is received by her from her own family†," the expression "her own family" must signify that from which she sprung, namely the family of her father and mother. Hence, say some lawyers, the word "son" is pertinent.

"The trifle which is received, &c." (CCCCLXVIII 3); what is obtained by a woman from the master of the family, as a reward for doing the business of the house, and making household utensils and the like, is her perquisite. So MISRA. The meaning is, what the master of the house, pleased with the performance of the household business, gives to a woman, is her perquisite.

As for what has been ordained by VYÁSA (Book II, Ch. IV, v. XXIX), which is thus expounded by JÍMÚTAVÁHANA: 'a gift to the bridegroom, with a declaration of its use in this form, "let this belong to the bride," but not a gift made without such declaration of the purpose, shall be her entire property; accordingly, "at the time of her nuptials" is mentioned merely by way of illustration: it is not an indispensable condition; for the declared intention of the giver is the cause of property vesting in her:' and as for the authentic text on the same subject, which is cited by JÍMÚTAVÁHANA, and in which the term "at the time of her nuptials" is omitted (Book II, Ch. IV, v. XXX): these precepts do not show the independence of a woman who possesses wealth denominated the property of a female;

* Labdham bandhu culât tathâ.

† Yal labdham swa culât tayâ.

female; for the bridegroom is mentioned as the person who received the gift (" what shall be given to the bridegroom ") : and the second text shows, that during her life a woman enjoys such wealth in concert with her husband, forbids the alienation of it without her own *express* sanction, and reserves it for herself when partition is made *among her sons* in their father's lifetime; and that after her death her sons shall alone obtain that wealth, on a partition made during the life of their father, or on a distribution among brothers *after his demise* : or else, upon the reasoning delivered under the title of Subtraction of Gift, if the sole property of the wife be acknowledged, and her independent power over it *be also admitted* on the suggestion of JÍMÚTAVÁHANA, then likewise that wealth is incontestably wealth given by her father. But 'SÚLAPANI, CULLÚCABHATTA, and the rest, admit, that the presents received before the nuptial fire, or on the bridal procession, may have been given by her father and the rest. Here, since it is improper to bar the comprehension of strangers in the term " and the rest," presents received before the nuptial fire, or on the bridal procession, are distinct from those which are given by her father and other relatives; consequently the separate property of married women is incontestably six-fold. What was received from a father, and what was obtained from a mother, are therefore two sorts of separate property; what was given by a brother or by a kinsman is one sort; *these* and what was obtained from the family of her husband, a present accepted before the sacrificial fire, and one received on the bridal procession, are six sorts of separate property held by women.

JÍMÚTAVÁHANA explains " given by a kinsman," bestowed by a maternal uncle or the like. 'SÚLAPANI expounds it, given by a kinsman of her mother, or by a relation of her father. Only six sorts of separate property held by women are *yet* seen, how *then is it said* this is an exception of a less number?

NÁREDA also propounds six sorts of separate property held by women :

CCCCCLXIX.

NÁREDA :—Gifts to a woman at the nuptial fire, at her procession, by her husband, her brother, her father,

father, or her mother, constitute her six-fold property.

A gift by her husband includes the present given in token of love, as propounded by MENU. Again : husband, and other terms expressive of connexion or relation, signify also their families ; but the word “ brother ” denotes kinsman, as in a former instance ; or it literally signifies “ brother,” *the consequent repetition being justified* by the same rule by which two names of kind are at once used in a general and particular sense.

CCCCCLXX.

CÁTYÁYANA :—But whatever wealth she may gain by arts, *as by painting or spinning*, or may receive on account of friendship from any but the kindred of her husband or parents, her lord alone has dominion over it : of her other property she may dispose *without first obtaining his assent*.

“ Arts ” in this text is expressed in the plural number, with the sense of “ and the rest.” Consequently her husband has independent power over all other wealth except the six-fold property of a woman. What then is the rule in respect of an estate devolving on her, from her father or other relative, *on failure of male heirs* ? It should not be answered, she is subject to the controul of her husband, even in respect of this estate, because it is not included in the six-fold property of women. Since the eventual heir of her father and the rest is, at a subsequent time, sole heir of wealth which had devolved on her from her ancestors, it contradicts common sense that this should be subject to the controul of her husband. To the question thus proposed the answer is, it is subject to his controul so long only as it remains in the possession of his wife ; afterwards, it shall be received by the legal heir of her father and the rest.

On the opinion of those who acknowledge the ownership of her husband in wealth acquired by his wife, not simple controul over it, how can the legal heirs of her father succeed on the death
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of the wife, since her husband's title is not divested so long as he lives? In truth, JÍMÚTAVÁHANA alone contends for the succession of her father's heirs, after the death of the daughter, to the patrimony which devolved on her *by the failure of male issue*; and he does not acknowledge the property of the husband in the wealth of his wife: but those who do not acknowledge the husband's claim, must not admit the succession of her father's heirs to the patrimony which has devolved on the daughter; for no text nor reasoning shows it. As for the argument, that, since this occurs in the succession of a wife who is the first entitled to the estate of one who leaves no male issue by males, the same should be also established in other cases, when a daughter or the like has succeeded; that argument would be also intruded in other remote cases, *such as the* succession of a daughter's son, or of a brother: and that is not founded on positive ordinances, but established by authors on the sole suggestion of their own understandings; it is not even noticed by CHANDÉSWARA and the rest. On the opinion of those who maintain the property of both *husband and wife* in her wealth, there is no difficulty whatsoever; for, it may be established that the husband's title is lost on the divestiture of his wife's.

“From any other” (CCCCCLXX): in that which is received from any but the kindred of her father, mother, or husband, and in that which is acquired by arts, her husband has ownership, and has independent power over it, that is, he may with propriety seize it, even though suffering no distress. Hence, though it belong to the woman, it is not her separate property *in contemplation of law*, for she is not independent. It is a remark of JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, that a wife has property, subject to the controul of her husband, in wealth devolving on her *from her own family*. That it becomes the property of her husband, is stated as the opinion of ancient authors. But some lawyers argue, that the estate of her father, devolving on his daughter *by the failure of male issue*, becomes her separate property; for the patrimony which devolves on a daughter *by the failure of male issue* is not mentioned in the text above cited (CCCCCLXX); and a subsequent precept of CÁTYÁYANA (CCCCCLXXV) states simply “what a woman receives:” and this they hold to be the meaning of JÍMÚTAVÁHANA himself.

That *last inference* we do not admit; for it is no-where seen, that a woman has independent power over any thing which is not given to her: the expression “of her other property she may dispose” (CCCCCLXX), declaring that only to be the *separate* property of a woman over which her husband has not independent power, it is a *just inference*, that he has such power over that only which is different from the six-fold property of *women*, as propounded by MENU and the rest. But if it be affirmed as the opinion of JÍMÚTAVÁHANA, that “this is a third kind of property;” (thus wealth over which a woman has independent power, and which is called her separate property, is the first kind; that which was acquired by arts or the like, and which is subject to the controul of her husband, is the second kind; the wealth which has devolved on her *from her ancestors* is the third sort, and both *husband and wife* have independent power over it :) that could only be admitted, *as the opinion of JÍMÚTAVÁHANA*, if it were confirmed by reasoning; but it contradicts common sense. It has been thus remarked in books, that the observation of authors, ‘the enumeration is only intended to except a less number,’ is thus contradicted; for *all* sorts of *exclusive* property held by women fall within the six denominations which have been mentioned. The observation, that the intention is to except a less number, is not pertinent; for the six sorts of property are described by their respective names. Nor is it to the purpose that the same CÁTYÁYANA, who declares the property of women to be six-fold, exhibits a greater number; for his meaning is, that every thing which is received by a woman, before or after marriage, from her father, or from his relations, or from the family of her husband, is her property given by affectionate kindred. The object of this *remark* is the food, vesture, and the like, which will be declared *to be the exclusive property of a woman*.

Some lawyers hold, that the number specified is affirmed to be an exception of a less one, because the perquisites mentioned in the text of DÉVALA (CCCCCLXXVIII), and in a precept of VISHNU above cited (CCCCCLXVII), constitute an additional sort of *exclusive property*; for example, according to the interpretation of JÍMÚTAVÁHANA, what is given as a bribe to a woman, by householders, by artisans, or by others, to send her husband
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and the rest to perform work required by them, is her perquisite; it is the price *or reward* of labour, because the purpose is to entertain *a labourer*. The exposition delivered in the *Retnâcara* is similar; but the interpretation of MISRA should be followed. Consequently, this wealth, being given by others than the kinsmen of her father and the rest, does not fall within the six-fold property *of women*. It should not be answered, this is only intended by the text, "whatever she may receive, on account of friendship, from any but the kindred of her husband and parents" (CCCCCLXX). That phrase is only applicable to a different case.

To the argument of these lawyers the answer is: if perquisite, which is an obscure term, can by any interpretation be included in the six sorts of property, why should the texts of Sages be otherwise expounded, by affirming an unusual sort *of property* exceeding that enumeration? for what a kinsman, being much pleased with her management of household affairs, bestows on a woman, is her perquisite; as that which is given in return for humble salutation is her property gained by loveliness: these and other acquisitions may be considered as distinct sorts of wealth given by her husband's father and the rest.

The sense of the text (CCCCCLXX) is this: what is received by a woman on account of work in household affairs and so forth, is the price of her labour, as it were her wages (for such is the subject of the text); what is *so* given to a woman is called her exclusive property, under the name of perquisite. Here, "house," is obvious; "household utensils," are brooms and similar things; "beasts of burden," are oxen and the like; "milch cattle," are cows and the rest; "ornaments of dress," are things worn for decoration; workmen are slaves *or servants*: the meaning in effect is, what is given through satisfaction at her skill in sweeping *with brooms*, in keeping and watching cattle and the rest, in commanding the slaves and so forth, or what is given as a bribe to undertake these several employments. But VYÁSA otherwise defines a perquisite (*sulca*). JÍMÚTAVÁHANA.

CCCCCLXXI.

VYĀSA :—That which is given to bring *the bride* to the family of her husband is her perquisite; which is given as a bribe or the like, that she may cheerfully go to the mansion of her lord.

We hold that authors have otherwise expounded the texts of legislators, considering that also as the exclusive property of women which is given to wives and others as a bribe to send *their husbands and the rest* to perform work, such as thatching a house and the like; or *they have delivered such an exposition*, admitting some difference in the gifts subsequent to marriage, which have been specially defined. The difference in the two interpretations should be examined; no argument is found to show why a woman should not have independent power over that which she has gained by arts, or which has been given to her by a stranger on a religious consideration, or through friendship, but should have independent power over *that which was received as a bribe*.

“Food and vesture;” what is given for her support: this coincides with a subsequent text (CCCCCLXXV 2). “Ornaments;” ornamental apparel. “Perquisites;” what is given to a damsel on asking her in marriage. “Wealth received;” that which is obtained from a kinsman. All this is the exclusive property of a woman. MISRA and CHANDÉSWARA.

The perquisites, which have been already explained, may be also understood *to be meant*,

CCCCCLXXII.

ĀPASTAMBA :—Ornaments are the exclusive property of a wife, and so is wealth given to her by kinsmen or friends, according to some *legislators*.

The meaning is, ‘wealth given to her by friends is the exclusive property of the wife.’ “According to some legislators;” this is mentioned to show a regulated alternative: what is given
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by kinsmen on the marriage of their relative, at the time of the nuptial ceremony or the like, is the exclusive property of a woman ; but her lord has dominion over that which is presented at any other time. Accordingly, CHANDÉSWARA remarks on the phrase, “ and so is wealth given to her by kinsmen or friends, according to some legislators,” that wealth received at the nuptial ceremony, which is called a present given on account of marriage, is also the exclusive property of a wife.

CCCCCLXXIII.

MENU and VISHNU, on the subject of ornaments:—

Such ornamental apparel as women wear during the lives of their husbands, the heirs of those husbands shall not divide among themselves ; they who divide it among themselves fall deep *into sin*.

That ornamental apparel which is worn by women during the lives of their husbands, with their assent, the sons and the rest shall not divide when partition is made after the death of those husbands ; they who divide it become sinners.

CULLÚCABHATTA.

In so much only is that ornamental apparel the exclusive property of a wife. So the *Médhātī'hi*, the author of the *Pracúśa*, CHANDÉSWARA, VÁCHESPATI MISRA, RAGHUNANDANA, and others.

The assent of her lord is indispensably necessary ; and it is also requisite that this apparel should have been the several property of her husband, as declared by MENU.

CCCCCLXXIV.

MENU :—A woman should never make a hoard from the goods of the kindred *which are common to her and many* ; or even from the property of her lord, without his assent.

Wives

Wives and other women should never make a hoard for their own ornamental apparel and the like, out of the wealth of the family, *which is common to many, namely to brothers and the rest*; nor should a hoard be made, even from the property of her husband, without his acquiescence; hence this does not become the exclusive property of the woman. CULLÚCABHATTA.

By saying "women should never make a hoard," it is forbidden to take such goods; but it is not suggested, that, if the chattels be taken, the object is unattained: why then is it said, 'this does not become the exclusive property of a woman?' The answer is, since a right cannot be gained, if she take the effects without the assent of the owner, this does not become her exclusive property: but if none afterwards molest the woman who has so taken the goods, a title is gained by occupancy; for the maxim expresses, "what is not forbidden is permitted." Else the enunciation of the text would be superfluous, since gift could only take place by express assent in these words, 'be this thine.' Or the sense of the text may be this; a title is only gained by assent thus expressed, "wear this apparel." It should not be objected, how can it become her property since she has not acquired it? Habitual wear is considered as a mode of acquisition under the authority of the text. When another does not oppose the use of that apparel, the *tacit* permission of wearing it exists; else why is it not resisted? But if he do not oppose it, fearing to arouse anger, or to cause a breach of friendship, then indeed it does not become the property of the woman, notwithstanding such silent assent.

But CHANDÉSWARA, referring the word goods to the proximate term family or kindred, says, women should not make a hoard, or deliberately take wealth out of goods common to many, without the assent of the owners; nor even take it from the property of her husband, which is not common to him and another family, without the assent of the owner. It follows, that, if she take it from property belonging to a numerous family, by consent of all the owners, it legally becomes her exclusive property: but that is not deduced from the literal sense of the text, and is therefore unacknowledged by CULLÚCABHATTA. It should not be argued, this is suggested by the precept, "the heirs of those husbands shall not divide it among themselves;" because otherwise

otherwise it could not be supposed that apparel, being the sole property of her lord, might be divided by other heirs, and the prohibition would therefore be unmeaning. Heirs may here signify sons; it is consequently ordained, that sons should acknowledge ornamental apparel worn *by the woman*, with the assent of her lord, to be the exclusive property of their mother. It is declared by MENU and VISHNU (CCCLXIII), that ornaments worn by mutual consent are indivisible. From the concurrent import of these texts, CHANDÉSWARA has affirmed this. Consequently, those ornaments which are worn by the wives of co-heirs, with their mutual consent, become the exclusive property of those women.

If one brother have conceded ornamental apparel to the wife of another, and afterwards that other brother, *namely* the husband of the woman who is already provided with such apparel, refuse to concede ornaments to the wife of that *first* brother, what shall be the consequence? The ornaments already worn by one have legally become indivisible property, under the authority of the text (CCCLXII): the king, however, shall compel the concession of suitable ornaments to the wife of the *first* brother; or else, when partition is finally made, a sufficient sum must be first set apart to provide such ornaments, and they may then proceed to partition: but if they be destitute of wealth when a separation takes place, another rule must be followed.

Such is the nature of exclusive property held by women: they, not their husbands and the rest, have independent power over it, as owners of that property. The following texts declare it:

CCCCCLXXV.

CÁTYÁYANA:—What a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her lord or her parents, is called a gift from affectionate kindred;

2. And such a gift having by them been presented through kindness, that the women possessing it may

may live well, is declared by law to be their absolute property :

3. The absolute exclusive dominion of women over such a gift is perpetually celebrated; and they have power to sell or give it away as they please, even though it consist of lands and houses.
4. Neither the husband, nor the son, nor the father, nor the brother, have power to use or to aliene the legal property of a woman :
5. And if any of them shall consume such property against her own consent, he shall be compelled to pay its *value with* interest to her, and shall also pay a *fine to the king* ;
6. But if he consume it with her assent, after an amicable transaction, he shall pay the principal only, when he has wealth *enough* to restore it *.
7. Whatever she has put amicably into the hands of her husband afflicted by disease, suffering distress, or forely pressed by creditors, he should repay that by his own free will.

“ In the mansion of her husband :” the words are so connected. “ From her brother † or her parents :” this is merely illustrative. Hence, what is received by a woman, either after marriage or before it, in the mansion of her husband or in the house of her father, from her mother, from her father, or from other *persons*, is called a gift from affectionate kindred.

CHANDÉSWARA.

MISRA delivers a similar exposition ; but, instead of saying “ from other persons,” he says, from her own kindred, or from the relations of her lord. There is this difference :

That which is received from affectionate kindred (*sudāya*), is the gift of affectionate kindred (*saudāyica*). JIMÚTAVÁHANA.

That which is received from an affectionate father, mother, or husband,

* Book I, v. LXXIII.

† In a former citation the text was read “ husband ” (*bbartub*, not *bbrátub*). T.

husband, or from the kindred of these, is a gift from affectionate kindred. “Through kindness ;” through tenderness.

RAGHUNANDANA.

Such a gift is declared by law to be the absolute property of a woman. She may therefore consume it without the assent of her husband or guardian. As for the remark, that the absolute exclusive dominion of women over such property is an explanatory precept, whence it follows, that their husbands have not absolute dominion over that property, and that the legislator himself so explains his meaning (CCCCCLXXV 4) : the remark is erroneous ; for it would contradict the design to propound an explanatory precept, without first delivering a text suggesting the absolute dominion of women over such property. That a precept is explanatory, is deduced from the priority of another ordinance.

The legislator next declares, that a woman may sell or give away her own separate property, without the assent of any other person (CCCCCLXXV 3) ; “ even though it consist of lands and houses.” A woman has absolute exclusive dominion over such gifts, consisting of lands and houses, except such immoveables as her husband gave her. The *Retnâcara*.

NÂREDA propounds this exception of such immoveables as her husband gave her :

CCCCCLXXVI.

NÂREDA :—Property given to her by her husband through pure affection, she may enjoy at her pleasure after his death, or may give it away, except land or houses.

But some lawyers, considering the two subjoined texts of CATYÂYANA as relating to the separate property of women, because they are placed under that title, affirm that the precepts must be thus expounded : wealth given by her husband, even though it consist of gems and the like, she must not, while he lives, give to any person, nor entrust it to another ; by the authority of the text : but immoveable property she must not give to any person whomsoever, even after the death of her husband.

CCCCCLXXVII.

CCCCCLXXVII.

CÁTYÁYANA :—What a woman has received as a gift from her husband, she may dispose of at pleasure after his death, *if it be moveable*; but, as long as he lives, let her preserve it with frugality: or she may commit it to his family.

2. The childless widow, preserving inviolate the bed of her lord, and strictly obedient to her spiritual parents, may frugally enjoy *the estate* until she die; after her, the legal heirs shall take it.

“The childless widow;” considering that the several property of a woman may be resumed, if she do not preserve un sullied the bed of her lord (CCCCV 2), the legislator propounds this text. This maxim being true in respect of the several property over which a woman has exclusive dominion, the same is equitable in respect of an estate devolving on her by the failure of male issue. Or this text may not solely relate to the peculiar property of a woman, but to any effects which she holds as such: thus, according to CHANDÉSWARA and the rest, there exists a coincidence with the last text; but, according to JÍMÚTAVÁHANA, with both. These lawyers so expound the law.

The author of the *Pracāsa* announces the opinion of CHANDÉSWARA. HELÁYUDHA and the *Pārijāta* say, both those texts relate to the peculiar property of a woman, because they are placed under that title. Gems and the like given by her husband, must not be aliened whilst he lives; those which belonged to him, but devolve on her by failure of male issue, and both sorts of immoveables which had belonged to her husband, must never be aliened by a woman: such is the opinion of JÍMÚTAVÁHANA. Gems and the like given by her husband, or which have devolved on her from him in default of male issue, a woman may give away at pleasure: both sorts of immoveable property which had belonged to her husband she must not give away, but she may enjoy it under the text which declares property common to the married pair; all effects belonging to her husband, which she has received,

received, she must preserve with frugality as long as he lives: such is the opinion of CHANDÉSWARA and the rest. These opinions should be reviewed by the wife.

What is acquired by the wife during the state of deprivation of her husband, is also her peculiar property. How can it be so, since it is exclusive of the six sorts? *The answer is*, authors do not acknowledge the *restrictive* enumeration of six kinds; and even though it were admitted, the difficulty would be removed by affirming, *that this maxim is true of a woman who is herself sole mistress of the wealth acquired*. Who has a right to that which is acquired by a woman before marriage? A daughter may be also comprehended in a text formerly cited (Book III, Chap. I, v. LII 1), because the masculine gender is not there used in a determinate sense, or because the particle “and” connects the terms with that which is unexpressed; or, lastly, because the term “*son*” is illustrative of a general meaning: her father has therefore property in the wealth acquired by her, as he has a claim to the son produced by her before marriage. Such is the method founded on the opinion of ancient authors. It should be thoroughly examined by the wife.

But, according to JÍMÚTAVÁHANA, all wealth acquired by a woman is held by her as her exclusive property; as that which is gained by a married woman is subject to the controul of her lord, so is wealth acquired by an unmarried woman subject to the controul of her father, because she also belongs to her sire: hence, though *subsequently* married, she alone can enjoy or aliene such wealth, with the assent of her father. But, after the death of her husband, no person has dominion over a widow; her spiritual parent, that is, her father-in-law, or other guardian, merely support her: hence she has absolute power over that which she then acquires. This should be held demonstrated.

The legislator declares, that her husband has no power to use or aliene the legal property of a woman (CCCCCLXXV 4). On this subject DÉVALA propounds a special rule:

CCCCCLXXVIII.

DÉVALA: — Food and vesture, ornaments, perquisites,
VOL. III. P P fites,

sites, and wealth received by a woman *from a kinsman*, are her own property : she may enjoy it herself ; and her husband has no right to it, except in extreme distress :

2. If he give it away on a false consideration, or consume it, he must repay the value to the woman, with interest ; but he may use the property of his wife, to relieve a distressed son.

“ Food and vesture ;” funds appropriated to her support. “ Ornaments ;” ornamental apparel. “ Gain, or wealth received ;” that which is obtained from kinsmen. “ Perquisites,” wealth given to a damsel on asking her in marriage.

The *Retnâcara* and *Chintâmeni*.

Both sorts of perquisites mentioned by CÂTYÂYANA, and other kinds of *exclusive property held by women*, must also be comprehended in the text : this sort is mentioned by both commentators, to show that this also is her perquisite ; other kinds of female property must be comprehended in the text, considering the terms of it as illustrative of a general meaning.

When a husband, taking the property of his wife under pretence of some indispensable duty or the like, gives it away on immoral considerations, or consumes it, he must repay the value with interest : but the property of a woman may be taken without her assent, to relieve a distressed son. The *Retnâcara*.

Consequently, interest must be paid on the property of a woman, which is taken, after an amicable transaction, for the purpose of giving it away on immoral considerations : without the consent of women, their property must not be aliened on such considerations, nor consumed ; but that may be done to relieve a son. The *Chintâmeni*.

“ He may consume it :” hence it is deduced, that, although it bear no interest, it need not be repaid. The subjoined text makes this evident :

CCCCCLXXIX.

YÂJNYAWALCYA :—If a husband, in a famine, or
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for the performance of some indispensable duty, or during extreme illness, or while a creditor keeps him confined, should appropriate the wealth of his wife, he shall not, *while his distress lasts*, be compelled to restore it against his will.

For some duty which must indispensably be performed. The wealth of his wife taken to obtain relief in extreme illness, which prevents the performance of a duty, need not be repaid to her.

The *Retnâcara*:

“ Preventing ” is an epithet of illness : the meaning is, precluding the performance of a duty. Consequently, the separate wealth of his wife, taken by the husband to accomplish the performance of an indispensable duty, which cannot otherwise be fulfilled, need not be repaid against his will.

The *Vivâda Chintâmeni*.

Some lawyers add, what is taken in the distress of a son, even though it be not such as to prevent *the performance of duties*, the husband need not restore against his will ; for the epithet “ preventing ” does not occur in the text of DÉVALA : that only which is taken to obtain relief from such disease, afflicting any other than a son, which does impede *the performance of duties*, need not be repaid.

In the *Dīpacalīcā* the term is explained, while a creditor keeps him confined, preventing his eating and so forth. It is supposed in the *Dīpacalīcā*, that extreme illness is here denoted by the word disease. Considering this phrase as illustrative of a general meaning, CHANDÉSWARA holds, that confinement by a creditor is comprehended *in the text* : consequently, the purport of both commentaries is the same. In fact, whenever the performance of duties is impeded, a husband need not restore the wealth of his wife then taken on failure of other means of relief. Since the word “ husband ” is here exhibited, this rule relates to him alone, and to no other person. This should be held demonstrated. JĪMŪTAVĀHANA further observes, a husband, unable to subsist in a famine or the like without using the property of his wife, may then, but at no other time, appropriate her wealth.

“ And if any of them shall consume such property, &c.”

(CCCCLXXV 5); any one of them, her husband, her son, or any of the rest: their punishment should, according to circumstances, consist in harsh reproof or the like. But MENU directs that others shall suffer the punishment of a thief.

CCCCLXXX.

MENU:—Whether barren, or deprived of their sons, or destitute of kindred, the care of faithful wives must be the same, and of women whose husbands are absent, or who suffer distress:

2. On those men, whether kinsmen or others, who seize the property of such women while they live, a virtuous king must inflict the punishment of a robber.

“Barren;” sterile: consequently, barren women; those who have lost their sons, and have no kinsmen on the father’s, mother’s, or husband’s side: and married women, who are faithful to their lords, must be so protected; that is, must be cherished like infants: and so must women whose husbands are absent, or who have been forsaken by them without just cause. On those men who seize their property by force or fraud while they live, a virtuous king must inflict the punishment of a robber. Such is the exposition approved by CULLÚCABHATTA. “Kinsmen” is an expression merely illustrative, which must be extended to others also.

“But, if he consume it with her assent, he shall pay the principal only, when he has wealth enough to restore it” (CCCCLXXV 6): there is consequently no harm if he do not repay the loan while he remains indigent. Accordingly, a text denying interest on the property of a woman has been cited in the book on Loans and Payment (Book I, v. LXXII): and this return of the principal only must be understood in a case different from the relief of a distressed son, and in the instance of a gift on immoral considerations with *the assent of the woman*. By thus directing the restoration of such wealth with interest *in certain cases*, the supposition that

that the husband has a title in the sole property of his wife, as she has in the sole property of her husband, but that she has a further independent power over that which is called her exclusive wealth, is thus contradicted, by directing the restoration of her property with interest *in certain cases*; for wealth which also belonged to her own lord, could not become a loan *to him*.

“Whatever she has put amicably into the hands of her husband, afflicted by disease, suffering distress or calamity, &c.” (CCCCCLXXV 7): consequently, as his wife, seeing his distress, *voluntarily* gave her own property, so should her husband also repay it of his own accord, without a demand. Accordingly it is observed in the *Retnâcara*, her husband and the rest should voluntarily repay it. The sense of the text is this: her own property, which has been lent by a woman, seeing her husband or kinsman afflicted by disease or the like, he should voluntarily repay: so the *Chintâmeni*. Consequently, say some lawyers, this disease is not such an extreme illness as impedes the performance of duties, nor does the creditor obstruct the performance of them: the text does not therefore contradict YÁJNYAWALCYA. That is wrong; for it contradicts the maxim, “a distinct import is inadmissible when coincidence is possible.” Thus the sense is; he shall repay it by his own free will, not against his consent: the same is declared by YÁJNYAWALCYA, “he shall not be compelled to restore it against his will.” This also is meant in the *Retnâcara* and *Chintâmeni*.

CCCCCLXXXI.

CÁTYÁYANA:—Yet more; if he have taken a second wife, and no longer give his first wife the honour due to her, the king shall compel him, even by violence, to restore her property, though it was put amicably into his hands.

2. If suitable food, apparel, and habitation, cease to be provided for a wife, she may by force take her own property, and a just allotment *for such a provision*; or she may, *if he die*, take it from his heir:

3. This is a law of LIC'HITA ; but after receiving *her own property and just allotment*, she must reside with the family of her husband ; yet, if afflicted by disease, and in danger of her life, she may go to her *own* kindred.

If she have given her own wealth to relieve him in sickness or the like, or have amicably bestowed it in a season of calamity, and afterwards her husband, cohabiting with any other wife at pleasure, does not give her due honour in season or out of season ; or if he do not give her food and apparel : in either case, she may by force take back her own property, though given when she saw her husband afflicted by disease or the like, and may take the allotment to which she is specially entitled. Consequently, she may also take from his heir, that is, from the brother or other near kinsman of the proprietor, the food, apparel, and the like, which ought to be received by her in that secular order.

This must be affirmed to be an ordinance of the legislator LIC'HITA ; or this is a law of the written (*lic'hita*) code. But, after receiving this property, she must live with the family of her husband, and not go elsewhere inflamed with anger ; for she ought to reside with her husband's family only. If sickness supervene, she ought to take remedies there only ; but if a violent distemper occur, by which the loss of life becomes probable, and her husband does not provide suitable remedies, she may go to the family of her kinsmen, that is, to her father's family. The text is so expounded by VÁCHESPATI MISRA, following CHANDÉSWARA.

If a husband, although wealth have been amicably given by his wife, do not show her due honour, the king shall compel him, by force, to restore her property : such is the sense of the first verse. If he do not supply his wife with food and apparel, the king shall compel him to give her a just allotment for food, raiment, habitation, and the like, out of his own property : such is the sense of the second verse. This remark of SRÍ CRĪSHNA TERCÁ-LANCÁRA, commenting on the treatise of JÍMÚTAVÁHANA, is also accurate. But others consider this text (CCCCCLXXXI 2) as relating to widows : consequently, if brothers-in-law and the
rest

rest do not give suitable food and apparel to the widow of their brother, she may claim her just allotment from her husband's brethren. The assignment of a share consists of a provision for food and clothes: hence the appositeness of *certain* texts, which declare the *widow's* right of succession to the estate of him who leaves no son, and of other precepts, which ordain partition, and which allot a mere maintenance, is obvious.

VYÁSA declares how much wealth ought to be given by a husband to his wife :

CCCCLXXXII.

VYÁSA :—A portion amounting to two in the thousand out of the whole estate should be given to a woman ; that, and whatever wealth is bestowed on her by her husband, she may use as she pleases.

The word “husband” occurring in the last hemistich, the same term is presented in answer to the question arising on the first, “by whom should that portion be given?” JÍMÚTAVÁHANA.

Hence, after the death of a brother, the surviving coheirs, having given two thousand *panas*, or two *panas* in the thousand (*for the term is explained in both senses*), may divide the residue among themselves: such is the meaning of the first hemistich. Lawyers who affirm, as the import of the last, that a woman has independent power over wealth given by an affectionate husband, even though it be the whole of his property, are *thus* contradicted; for, were such an import established, it would be an unprecedented exposition; for the word portion or heritage (*dāya*), taken in its derivative sense, signifies only wealth in general. More may therefore be given by any other person. If more than two thousand *panas*, or two in the thousand, be given, does that allotment legally become the exclusive property of the woman? CHANDÉSWARA considers it as invalid: for he has cited the text of VYÁSA, with this observation premised, “the legislator shows how much wealth may be given by her husband, over which a woman shall have exclusive dominion.” The same *commentator* remarks, since the text limits *the donation* to the sum of two thou-

land *panas*, it follows, that, if the estate be small, a less sum should be given. In this term "*dwisahasra*," the suffix of etymology has been rejected after the numeral apposition: *panas* must be commonly understood when the number is mentioned; but the species or thing to be numbered is not particularised. But JÍ-MÚTAVÁHANA says, more should not be given: the prohibition of giving *more* is deduced from reason and from the letter of the text. It is not here supposed that the donation can be void. In both opinions, there is a contradiction to common sense; for two thousand *panas* must be given by him who possesses a hundred millions of things *bearing a certain value*, and by him who possesses a hundred things *of the same denomination*. Some lawyers reconcile this difficulty by saying, arguments drawn from common sense have less force than positive law. Others say, that of which two are given is expressed by the word two (*dwi*), some term being understood, or the suffix of etymology being rejected. The sense of the term "*dwisahasra*" is deduced from this apposition; such *two* thousand, of which *one is given*; or else, that of which one thousand is the cause of giving two: it is an epithet of heritage or property (*dāya*). Consequently, two in the thousand must be given out of the property; such is the limit of donation: or else, one part out of two thousand *must be given*, that is, one in two thousand. Thus there is no trouble in explaining the terms; and the sense being completed by the word thousand, the suffix *a* should be admitted.

CHANDÉSWARA, reflecting on this contradiction to common sense, has inserted another interpretation: 'lawyers consider this text as relating to joint property;' because a text ordains, "what a man has himself acquired may be aliened at his pleasure." Thus, since it appears that a man may aliene at pleasure what he has himself gained, there can be no precept restricting donation to two thousand *panas*, for the purpose of conferring exclusive property on a woman: and thus, although it be the opinion of CHANDÉSWARA and the rest, that joint property may not be given away by an undivided parcener, still the gift of a trifle, through favour, to a wife, a son, and the like, is authorised: a greater sum is excepted; and more being given, the donation is void. Such is the whole import of that interpretation.

But the author of the *Pracāsa* says, more than two thousand

panas

panas must not be given to the wife of lepers and the rest, entitled to food and apparel only, and residing apart on food separately prepared.

In this case, since the maintenance is not regulated, the limitation of a sum would be irrelevant; it seems therefore that this allotment is given by the brothers or other kinsmen of their husbands, *to be held by those women* as their exclusive property. But the allotment for such women residing with the family and partaking of the same food is not limited; for due honour should be shown to them, as well as to the wives of other coheirs. Since these three opinions, being contradictory, cannot all be followed in practice, the opinion of the author of the *Pracās'a* should be adopted, because it is *the most* ancient: other opinions have been here inserted for the sake of elucidating this, and of thereby obviating the objection which modern authors have set up against it.

If the father die after promising to give, as exclusive property, such a sum as may be *legally* bestowed on his wife, CATYÁYANA ordains, *that it shall be delivered by his sons.*

CCCCCLXXXIII.

CATYÁYANA:—What has been promised to a woman by her husband, as her exclusive property, must be delivered by his sons, provided she remain with the family of her husband; but not if she live in the family of her father.

Consequently, there is no harm in not delivering to a woman who resides, of her own authority, with the family of her father, what has been promised to her as her exclusive property.

CCCCCLXXXIV.

CATYÁYANA:—But a wife who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight

light in being faithless to his bed, is held unworthy of the property before described.

Kinsmen, resuming the exclusive property of such a woman, may take it to themselves. *The Vivāda Chintāmeni.*

“ Acts injurious to her husband ;” the administering of poison or the like. “ Who has no sense of shame ;” who goes to other towns on false pretences or the like. “ Who destroys his effects ;” who incurs expences for immoral purposes.

Wealth was conferred for the purpose of defraying sacrifices; therefore distribute wealth among honest persons, not among women, ignorant men, or such as neglect their duties.

This text is cited by JÍMÚTAVÁHANA and the rest, under the title of Succession to the estate of him who leaves no male issue (CCCCXIII): it is likewise inserted by CHANDÉSWARA in this place. Consequently, “ distribute ” here positively intends donation, and the taking of an inheritance. The distributor is the king, or any other person. Or the denial of donation, and of succession to an inheritance, *are meant*; the one expressed, the other implied by parity of reasoning. But let him not distribute it among women, ignorant men, or those who neglect their duties: such is the construction of the sentence. Consequently, peculiar property should not be given to a woman solely by the will of the donor, but should be conferred with due attention to her good qualities and the like, and in proportion to her wants.

SECT. II.—*On Succession to the Exclusive Property of a Woman.*

ART. I.—*On the Succession of her Issue Male and Female.*

Sons and daughters shall jointly succeed to such property left by their mother, under the text of MENU (IV). He himself makes that evident :

CCCCLXXXV.

MENU :—On the death of the mother, let all the uterine brothers and the uterine sisters, *if unmarried*, equally divide the maternal estate : *each married sister shall have a fourth part of a brother's allotment.*

The text of NÁREDA (CCCCLXI) will be referred to wealth received on account of marriage. It should be understood that debts must of course be paid ; for the succession is similar to the inheritance of the paternal estate ; and a daughter is also considered as an heir.

CCCCLXXXVI.

YÁJNYAWALCYA :—Let the sons, after the death of their parents, equally share the assets, and equally pay the debts of the deceased : what remains of a mother's fortune, after payment of her debts, her daughters inherit ; if there be no daughters, their issue.

The words " sons shall divide," and " after death," are repeated from the first hemistich ; consequently, after the death of
their

their mother, sons and daughters shall divide her fortune : such is the construction of the phrase. But, according to ancient authors, “after the death of their parents” must be repeated in the second hemistich ; for a son, not being his own master while his father lives, cannot regularly divide that fortune. The same likewise is nearly deduced from the interpretation of JÍMÚTAVÁHANA and the rest.

Or unmarried daughters only shall take an equal share with a son, not a married daughter.

CCCCLXXXVII.

VRĪHASPATI :—The property of a married woman goes to her sons; but her daughter, if unmarried, has an equal share of it ; if she be married, she inherits not, *in that case*, the wealth of her mother.

The term “offspring” here relates to her sons.

CHANDÉSWARA, JÍMÚTAVÁHANA, and the rest.

CCCCLXXXVIII.

SANC’HA and LIC’HITA :—All uterine brothers and virgin sisters are entitled to equal shares of *the* wealth *left by their mother*.

CCCCLXXXIX.

DÉVALA :—A married woman being deceased, her property goes to her son and *unmarried* daughter, as parceners : if she leave no issue, let her husband take it, her mother, her brother, or her father.

CCCCXC.

GÓTAMA :—A woman’s estate goes to her daughter
not

not betrothed, *then* betrothed only, or *lastly* married.

On this text of GÓTAMA, and taking the literal sense of the precepts of NÁREDA and YÁJNYAWALCYA, daughters succeed first to the separate property of a woman ; on failure of them, a son : but that is contradicted by MENU, VRĪHASPATI, and DÉVALA ; for they expressly declare the equal title of the son and daughter. Thus, a son succeeds to the separate estate of his deceased mother, but an unmarried daughter has an equal title with him ; on failure of either of them, the other inherits *the whole* : in default of daughters not affianced, one who is verbally betrothed shall inherit ; for she is separately mentioned by GÓTAMA.

CHANDÉSWARA.

MISRA, CHANDÉSWARA, and CULLÚCABHATTA, read the last measure in the text of VRĪHASPATI, “ she receives a trifle as a mark of respect ” (*labhatē māna mātracā*). Hence, from the concurrent import of the text of VRĪHASPATI, that of MENU likewise is thus expounded by CHANDÉSWARA : ‘ unmarried sisters only have equal shares with their brothers ; but to married sisters some trifle must be given as a mark of respect, in proportion to the estate.’ MISRA concurs in that opinion. But CULLÚCABHATTA says, out of the maternal estate the fourth part of a share shall be given to married sisters, as a quarter of a share is allotted to unmarried sisters out of the paternal estate. JÍMÚTAVAHANA reads, “ she shall not inherit the wealth of her mother ” (*nā labhēn mātrīcam dhanam*) ; and adds, on failure either of a son or of an unmarried daughter, the other inherits the whole ; in default of both, the claim of married daughters who have or may have sons is equal.

What proof is there that a married daughter shall in this case inherit the separate estate of her mother ; for sister, daughter, and other terms in the texts of MENU and the rest, relate to unmarried daughters only ? Lawyers thus reconcile the seeming difficulty : the word *issue* occurring in the text of DÉVALA, and a married daughter being *issue* of her mother, both she who has and she who may have a son are entitled to inherit. Then a barren or widowed daughter should also succeed ? They do not inherit, because they cannot confer a benefit on their mother ; but she
who

who has, or may have, male issue, can confer a benefit by means of her son. So JÍMUTA VÁHANA.

But some lawyers hold, that, on failure of unmarried daughters, a married one shall have an equal share with a son ; for no distinction in respect of daughters is mentioned in the texts of MENU, NÁREDA, YÁJNYAWALCYA, and VAŚISHT'HA : but the text of VRĪHASPATI relates to the case where an unmarried daughter exists : and even on the text of GÓTAMA, as there is an order of succession to the paternal estate, so there is in the present instance ; but with this distinction, that a son and daughter jointly succeed. That opinion should be rejected, being unnoticed by esteemed authors.

SRI CRĪSHNA TERCÁLANCÁRA and others hold, that unmarried daughters, whether verbally betrothed or not, shall at the same time take equal shares. Does it not appear, from the separate mention of them in the text of GÓTAMA, that their title is successive ? To this we reply, since it is acknowledged that *the succession of a daughter who has been betrothed is barred by the claim of one who has not been affianced*, both cannot have an equal right to inherit with their brother : one who has an equal title with the preferable heir, cannot be reduced to an equal succession with one who would have been excluded *by that heir* ; for stronger and weaker claims cannot, in the same circumstances, be equal. But, as a son, who would be debarred by the existence of his own father, has an equal claim to the patrimony with his paternal uncle, who had an equal right with his father, so likewise, in the present instance, *a betrothed daughter, who would have been debarred by a daughter not betrothed, has an equal title with a son who had an equal title with the daughter who was not betrothed.* As for the argument, that a son's son, whose own father is dead, confers benefits by the oblation of single and double sets of funeral cakes, but not while his own father is living ; this consequently, not the intervening right of his father, is the cause why he does not receive the heritage : that is futile, for the great-grandson, whose own father is dead, must necessarily be debarred by his paternal grandfather. Therefore, as it is not admitted that paternal uncles and the rest *on the one part*, and a brother, his son, or grandson, *on the other*, debar or are debarred by each other, so likewise it is not admitted that a son *on the one part*, and a daughter not actually married

married *on the other*, debar or are debarred by each other. But this and other inferences are not admitted by RAGHUNANDANA and the rest.

The text of GÓTAMA relates to property received at the time of the nuptial ceremony. So,

CCCCXCI.

MENU and the *Mahábhárata*:—That which was given to her mother at the time of her marriage shall become the share of the virgin daughter alone.

The daughter not verbally betrothed, whom the legislator calls a virgin daughter, shall take the property which was given on the bridal procession of her mother. To the question, who succeeds in her default? the answer is, a daughter only betrothed, as ordained by GÓTAMA; but, on failure of her, the married daughter, who has or may have a son; as suggested by the text of VAŚISHT'HA.

CCCCXCII.

VAŚISHT'HA:—The paraphernalia of the mother her female issue shall inherit in equal shares.

On failure of such a married daughter, a son succeeds; in default of him, a barren or a widowed daughter, for they also are issue of the mother. Such is the opinion of JÍMÚTAVÁHANA.

The opinion of CHANDÉSWARA should be here followed. But as for the explanation of the word *apratishṭhitā**, proposed by MISRA and CHANDÉSWARA, (one whose husband is indigent, and who is unfortunate,) it has been censured by JÍMÚTAVÁHANA and the rest, because there are no grounds direct nor argumentative for such an exposition. As for the word paraphernalia (*pārināyya*) in the text of VAŚISHT'HA, which is expounded by MISRA and CHANDÉSWARA, 'female apparel, mirrors, bracelets,

* Translated "betrothed only."

bracelets and the like,' that explanation might be admitted, if it did not contradict the rule for expounding phrases of scripture and of law in a literal sense : but it is improper to interpret the words of scripture and of law in a secondary sense, or by construction with remote terms, by repetition and the like ; for otherwise, words becoming *similar to* the milch cow which gratifies every wish, all words would be presented in all senses, and there would be no certainty of the meaning. The same remark should also be extended to other *parts of the sentence*, lest the term "woman" (*interpreted female issue*) be taken in various senses by an *implied* repetition, under the rule, *that the plural number is an abridged form of the single term thrice or oftner repeated*. Consequently, admitting no distinction of daughters unmarried or married, they *all* have an equal claim to the female apparel and the like. Thus some lawyers. But that is wrong ; for, in the gloss on the text of YÁJNYAWALCYA, the same rule is applied to wealth given on her marriage, and to the paraphernalia *of a married woman*. Consequently this term has been expounded as signifying female apparel and the like, on the consideration that the word was so used by ancient authors.

The right of the daughter in preference to the son is founded on the mention of daughters in the text of YÁJNYAWALCYA (DI). It should not be argued, that this word relates to unmarried daughters : to the question who shall inherit on failure of them, there would be no certain answer.

Like other separate property left by a married woman, a daughter inherits this also on failure of sons. It should not be argued, ' be the law as it may in other cases, still the son, as ' issue of the mother, has, in this instance, a right of inheritance ' on failure of a daughter, *not in preference to her*, for the term ' " her " or their, in the text of NÁREDA (CCCC LXI), intends ' the mother.' Even in that case the difficulty is removed by referring the word daughter to the unmarried one, upon the coincidence of the text of MENU ; and the word " her or their " may intend the married daughter immediately presented *by the order of the sentence*. Connecting the word " daughter," which signifies female offspring of the mother, with " issue," signifying progeny, the sense exhibited is " issue of the daughter : " the supposed objection, that a person or thing cannot be *spoken of*, at the

the same time, *as effect and as cause*, is thus obviated. If the word "issue" implied son of the mother, the word "her" or "their" would be unmeaning; for, without that term, the word mother is already presented in the phrase "*daughters share the wealth of their mother.*"

It should not be objected, that the succession of the daughter in preference to the son is suggested by the text of YÁJNYA-WALCYA (CCCCCLXXXVI); because, the word "her" or "their" not being found in that text, the meaning must be 'issue of the mother.' Since there is no argument to prove the restriction of that text to wealth received at the time of marriage, it has been already expounded as relating to the estate of a married woman in general; and the word "issue" always requiring the reference to a parent, it should be joined in construction with the nearest term "daughter." It should not be objected, that, in answer to the question arising on this interpretation of the phrase, "if there be no female offspring, then male issue," the mother is most naturally presented, being already placed in construction as the parent. Lest another text (DI) become a vain repetition, this precept must be explained as relating to other property of a woman, except that which she received at her marriage: it is therefore improper to affirm that the son succeeds on failure of daughters, and the interpretation therefore is not simple. Consequently the terms ought only to be understood in this sense, "issue produced by them."

Again: this text does not relate to wealth received at the time of marriage; it is therefore confirmed that no proof exists of the right of a married daughter to inherit, in preference to a son, wealth received *by her mother* at the time of marriage. To this it is answered, the joint right of all daughters being deduced from the text of YÁJNYAWALCYA, because that attributes a right to daughters as such, the order of succession, propounded by MENU and GOTAMA, is not ordained by YÁJNYAWALCYA; *but* the word "daughter" intends secondarily an unmarried one. Hence all daughters first inherit successively; on failure of them, the son has a demonstrated title.

The general right of daughters and sons to take equal share, being deduced from the text of MENU, and from that of YÁJNYA-WALCYA, above cited, the order of succession is only suggested

by the text of VRĪHASPATI: does it not follow, therefore, that a son and a married daughter have an equal title to the estate of a woman other than wealth received at her marriage? It should not be objected, that the equal participation of one who was debarred, with one by whom he was debarred, is contrary to common sense. It has been already stated, that this must be admitted in the case of wealth inherited from ancestors: in the instance of a title deduced from reasoning, argument, which justifies the equal claim of one by whom another is debarred, cannot indeed justify the equal claim of one who was debarred by him; but in a case expressly ordained by law it is otherwise. Thus, since reasoning is not in this case adduced to prove the equal title of the son and of the daughter, their equal claims must be affirmed to be solely deduced from express law; and if the equal title of one who was debarred, and of one by whom he was debarred, have been propounded in express texts of law, then only can it be admitted.

To the question thus proposed the answer is, No; for the exclusion of the married daughter, if there be a son and an unmarried daughter, is suggested in a portion of a text above cited (CCCCCLXXXVII), as read by CHANDÉSWARA; and it has been already established by investigation, that a married daughter inherits only on failure of both, since there is no ground for selection.

CCCCXCIII.

CÁTYÁYANA:—On failure of daughters, that estate *of a married woman* shall descend to her son; but, in default of her parents and brothers, what she received from her kinsmen devolves on her husband:

2. Married sisters shall share with kinsmen: this law, concerning the separate property of a woman, is ordained in the case of partition.

Consequently, since there is no proof that the word “daughter,” which occurs in the texts of many legislators, must be taken in a

secondary sense ; and since the order of succession is delivered in the plural number, it must be considered as demonstrated that sons succeed on failure of all daughters. On the opinion of RAGHUNANDANA and the rest, this becomes an easy inference ; for they do not admit that the person who was debarred, and the heir by whom he was debarred, can participate equally.

CCCCXCIV.

VISHNU, after premising “ forms of marriage :”—In all forms of the *nuptial* ceremony, the estate of women who leave issue descends to their daughters.

CCCCXCV.

MENU :—If a widow, *whose husband had other wives of different classes*, shall have received wealth at any time *as a gift* from her father, *and shall die without issue*, it shall go to the daughter of the *Bráhmaṇi* wife, or to the issue of that daughter.

JÍMUTAVÁHANA infers, from the special mention of “ wealth received from her father,” that property given by her father, at any other time but that of the nuptial ceremony, shall go to the daughter : the word *Bráhmaṇi* is a mere repetition. Consequently, since the term *Bráhmaṇi* merely suggests lawful *marriage*, wealth given by their fathers to women of any class shall descend to their daughters, not to their sons while a daughter is living. Disapproving the *vain* repetition supposed in this interpretation, he subjoins another explanation ; ‘ or, lest the word *Bráhmaṇi* should become a *vain* repetition, the text may be explained as signifying, that the daughter of the *Bráhmaṇi* wife shall take the wealth which the *Cshatriyá* or other wives, leaving no issue, had received from their fathers : the separate property of a woman who leaves no issue does not devolve on her husband. Thus the whole text is well interpreted.’ CHANDÉSWARA and CULLÚCABHATTA adopt this explanation. It should not be

argued, that the text does not ordain the right of a daughter by another wife, but limits succession in favour of one born of a *Bráhmaṇi* woman in lawful wedlock. The words "received from her father" would be unmeaning; and many phrases must be taken in a secondary sense, if texts, expressed in general terms, must be referred to a limited import, in consequence of a distinction taken in regard to daughters. As for the notion that the text is intended to show the succession of the *Bráhmaṇi* daughter to wealth given by a father or other kinsman on any other occasion but the nuptial ceremony, that also is not approved by authors; for there would be a disparity in the repetition of laws concerning presents given at the nuptial ceremony, and those which are bestowed on other occasions.

It should be here remarked, that, although daughters by other wives of various classes be living, the *Bráhmaṇi* daughter by another woman succeeds to the wealth which had been at any time given by their fathers to the *Cshatriyá* and other wives who leave no issue. In like manner, since a daughter by another wife is found to have a prevailing claim to wealth given by a father in preference even to a son by another wife, a married woman's own daughter must also have a prevailing title in preference to that woman's son: a daughter should therefore inherit, although a son exist. It is accordingly said in the *Retnácara*, the paraphernalia of a married woman, presents given on her marriage, and wealth given to her by her father, descend to the son, on failure of daughters. The gloss of MISRA contains an exception; whatever has been given by any other person but her father, goes to her brothers and sisters. This has not been noticed by JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest; and no obvious authority is found, except the text of CÁTYÁYANA, containing the word "that" (CCCCXCIII). The author of the *Mitácshará* says, the term *Bráhmaṇi* intends wife of the highest class; consequently, on failure of the *Bráhmaṇi*, the daughter of the *Cshatriyá* wife shall take the wealth which a *Vais'yá*, who leaves no issue, had received from her own father. That is not admitted by SRÍ CRÍSHNA TERCÁLANCÁRA, because JÍMÚTAVÁHANA, not perceiving any authority for it, has not stated that opinion.

"Her issue" (CCCCXCV); the son of that daughter, that is,

is, the daughter's son of that other wife. "Wealth received from her father:" this is merely illustrative of every sort of separate property held by women; so the authors of the *Médhatit'hi* and *Pracāsa*, unsupported by other commentators. The opinion of CHANDÉSWARA and the rest is not there contemplated.

Who is heir to the separate property of a married woman, on failure of sons and daughters? JÍMÚTAVÁHANA replies, the son's son is heir to the separate property of a married woman, excepting presents given at her marriage; for he confers benefits by offering the funeral cake in the double set of oblations. Why does not the son's son inherit, in preference to the daughter? It should not be answered, he does not inherit; because there is no argument to establish the succession of a grandson distant by an interval, since the text of NÁREDA declares the right of the daughter immediately after that of the son (CCCCXIX). Since that text is inserted by JÍMÚTAVÁHANA under the title of Succession to the estate of him who leaves no male issue, the word 'son' must necessarily signify male issue by males as far as the great-grandson.

To the last question proposed the answer is, the succession of a daughter to the separate property of her mother is expressly ordained by law, not deduced from reasoning. Were it inferred from argument, she would have no right if a son existed. Hence it is improper to contest her right, which is suggested generally by her relation as daughter: it could only be resisted by the authority of a special text, if such there were. But other lawyers hold, that a daughter is heiress in the first place, solely because she sprang from the body of the mother; else the right of the daughter would be subsequent even to that of a daughter's son. Neither has the daughter's son an equal claim with the son's son, nor yet a prior claim; for the son of a married daughter, who is herself debarred by a son, is excluded by the son of a son, by whom the daughter was debarred. But SRÍ CRĪSHNA TER-CÁLANCÁRA, adopting this reasoning, affirms the prior title of a daughter's son to inherit wealth given at the nuptial ceremony. This, therefore, is the decision: on failure of sons, a daughter's son is, in the first place, heir to wealth given at the nuptials; in default of him, the son's son: but, to property which was not

given at the marriage, the son's son is heir, on failure of married daughters ; and in default of him, the daughter's son.

Some lawyers ask, admitting the succession of a daughter under the authority of the text, although she confer no benefit *on her parents*, how can a daughter's son inherit?

CCCCXCVI.

SÁTÁTAPA :—After the first annual obsequies by the *śapindas*, whatever is given *at the monthly rites* to ancestors *by the son of the deceased*, his mother has a share of the benefit : this is a settled rule in all systems of religious and civil duties.

If it be argued, from this text of law cited by RAGHUN-ANDANA, that a daughter's son also confers benefits on his maternal grandmother, because she has a share of the funeral cake offered to his maternal grandfather, since the word “ancestors,” (literally, fathers,) intends three paternal and three maternal forefathers, namely, the father and the rest, and the maternal grandfather and so forth ; and the word “mother” intends three female ancestors ascending from the mother, and three other female ancestors ascending from the maternal grandmother ; *these lawyers reply*, the word “ancestors” intending three persons ascending from the father, there are grounds for taking the word “mother” in the large sense of mother, paternal grandmother, and paternal great-grandmother, namely, the coincidence of the text formerly cited (CCCCXXXII), and of the following precept :

CCCCXCVII.

At obsequies on the day following the eighth lunar day in certain months*, at those with a triple set
of

* *Anwashtacā* ; on the ninth lunar days of *Pauska*, *Māgha*, and *P'hālguna* ; and with some, in *Āświna* also. T.

of oblations, at *Gayá*, and at the anniversary obsequies, the son should separately perform a *śrāddha* to his mother; in other cases he should perform obsequies to her with her lord.

For it is there shown, that, in other instances, the *śrāddha* should be performed to those women with their lords, for whom it is separately performed by the followers of the *Yajurveda* at the obsequies mentioned. But if this be taken as an indirect authority for considering the word “mother” as bearing the secondary sense of maternal grandmother, then she is in truth benefited by her daughter’s son: yet *SRI CRISHNA TERCÁ-LANCÁRA* objects to this, the remark of *A’CHÁRYA CHÚD’Á-MANI*, that the son of an uterine sister, and the son of a sister by a different mother, have an equal title to the estate of him who leaves no male issue *nor near heir*. They could not, say some lawyers, have an equal right of succession, if the maternal grandmother could be benefited by her daughter’s son. That is futile; for the succession of the daughter’s son is deduced from a text of *VRĪHASPATI* which will be cited; and he has, as issue of his grandmother, a legal right of succession under the text of *MENU* (XLII), before her husband there mentioned, but after her son’s son; and the texts of *NÁREDA* and *YÁJNYAWALKYA* (CCCCLXI and CCCCLXXXVI) suggest his succession.

Admitting the succession of a daughter’s son, but after the great-grandson in the male line, should he not also succeed to wealth given at the nuptials, after both the grandson and the great-grandson in the male line, *not before either of them*? No; the right of the daughter’s son being ordained by texts of law, the further order of succession is established by reasoning; and that reasoning is here founded on proximity, and on the similar mutual exclusion of the remoter offspring of those who debar and are debarred by each other. Then the son’s son is not heir, because he is not mentioned in the text, and surely the son of that grandson *has no claim*? The right of the daughter’s son being barred, this suggests the right of the son’s son to wealth other than that which had been given at the nuptials; but a son’s son, and the son of that grandson, shall succeed before the husband to wealth

wealth given at the marriage, because they are issue of the woman. If the great-grandson in the male line inherit in right only of his being issue of the woman, may not his son or remoter descendent also inherit? Both lineal descent and benefits conferred are causes of inheriting the separate property of a woman; for the word "him" is not limited to the masculine gender in the text of MENU, "even the son of a daughter delivers him in the next world, like the son of his son;" and that text must be considered as relating to the son of an appointed daughter, but not restrictively, that the verse of the *Mahābhārata* (CV) may coincide with it. Since the rights of a son's son are attributed to a daughter's son, the son of a daughter inherits after the son of a son; but he is first heir to the wealth given at nuptials, because, say lawyers, his mother is in this instance chiefly considered.

The daughter of a daughter is not heiress with the son of a daughter, nor after him, nor before him; for no law ordains her succession. As for the subjoined text of MENU, it shows that some trifle shall be given as a mark of respect by the son and by the daughter, not that a share shall be received by the daughter of a daughter; for the text expresses "something," *that is, some trifle*; and the expression "should be given," suggests the brother and sister as the givers, which would be improper if she had an equal right of inheritance with them.

CCCCXCVIII.

MENU:—Even to the daughters of those daughters it is fit that something should be given, from the assets of their maternal grandmother, in proportion to the allotments, on the score of natural affection.

"In proportion to the allotments;" in proportion to the great or small amount of the assets. The *Retnācara*.

But VÁCHESPATI BHATTACHÁRYA says, something must be given to the daughter's daughter, whose own mother is dead; and that must be given by a married daughter, not by a son, nor by an unmarried daughter: but if the wealth were received at
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the nuptials, *something must be allowed* even by a son ; and that something which is given shall be proportionate to the share of her mother, as the son's son, whose own father is dead, receives a share of the property left by his paternal grandfather. It is proper therefore to refer the word "those" to the persons who make the partition.

The comprehension of the married daughter in the text preceding this (CCCCLXXXV) is not universally admitted ; for the unmarried daughter may be intended by the word "sister." The succession to the separate property of a woman does not, like the inheritance of an estate left by a man, extend to the third in descent : this objection to that commentary should also be examined.

VÁCHESPATI MISRA likewise affirms, that, on failure of daughters, the son and the daughter of a daughter inherit under the text of MENU. To this again it may be objected, say *some* lawyers, that, according to MISRA and CHANDÉSWARA, the son of a daughter succeeds, on failure of daughters, to the wealth given at nuptials, although a son exist, under the texts of NÁREDA and YÁJNYAWALCYA above cited. That is questionable ; for the full import of the text of YÁJNYAWALCYA relates to other sorts of property except wealth given at nuptials, since another precept of YÁJNYAWALCYA (CCCCLXXXVI) would be a vain repetition if this text related to wealth given at nuptials. The precept of NÁREDA also may bear the same import ; for the word "sons" in his text (CCCCLXI) may be brought *from the first hemistich into the last* : in both instances, it is more proper to carry forward the word sons *into the second hemistich*, than to attribute the limited sense of wealth received at nuptials to the words "estate" and "assets," which denote property in general, and which are already carried forward *into the last hemistich of each text* ; and the son of a daughter is inferior, in comparison with the woman's own son.

JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, affirm the right of the son to inherit wealth given at nuptials, in preference to the daughter's son. On failure of both grandsons, RAGHUNANDANA holds, that the great-grandson in the male line *shall inherit*. JÍMÚTAVÁHANA admits the right of a great-grandson in the male line. But that reading, in the treatise of RAGHUNANDANA,

ANDANA, authors consider as an error of the transcriber. This is not elegant ; for it is wrong to suppose that JÍMÚTAVAHANA, who asserts the succession of a daughter in right of the funeral cake offered by her son at the double set of oblations, should not admit the succession of a grandson in the male line who does himself offer the funeral cake. Accordingly SRÍ CRÍSHNA TERCÁLANCÁRA, author of a commentary on his treatise, says, ‘ on failure of heirs as far as the daughter’s son, succession, extended to the great-grandson in the male line, is suggested indirectly.’ The right of a great-grandson by males, on failure of grandsons in either line, is therefore demonstrated. In default of him, barren or widowed daughters succeed ; for they also are *issue of the woman*. So RAGHUNANDANA and JÍMÚTAVAHANA.

But others hold, that these *female heirs* succeed merely as daughters ; they were before debarred by persons who confer benefits on *the female ancestors*, but have now gained the opportunity of asserting their claim. Is not this inaccurate, since the son of a daughter confers no benefit on *his maternal grandmother* ? If it be said, benefiting her husband and the rest, he mediately confers benefits on *her* ; it is answered, a married daughter would in that case succeed in preference to the son’s son. To the question thus proposed the answer is, since a married daughter may confer benefits on the husband of her mother by means of her son, she, who thus affords some advantage, being at the same time “ daughter,” and “ issue of the body ” of *her mother*, cannot be debarred by those who confer greater benefits ; for the advantages afforded are not principally considered in treating of separate property held by women. But barren and widowed daughters, conferring not the least benefit, ought to inherit after the great-grandson in the male line, but before the husband, because they are daughters, and sprang from the body of their mother. Then, should not these two inherit before the grandsons of a son, whether in the male or female line of descent from him ? It may be answered, what should prevent their succession to this property, any more than to the estate of one who leaves no male issue ?

But others again affirm, since there is no proof that the funeral cake offered at the double set of oblations shall be chiefly considered in the succession to separate property held by women, therefore

therefore the barren and widowed daughters who offer the anniversary cake may inherit before a daughter's son.

Why do not a son, a son's son, and the son of a grandson, jointly inherit the estate of a married woman, as they do the property left by a man? It should not be answered, they inherit jointly on the sole authority of a text of CĀTYĀYANA, which relates to the subject of succession to the property of a man (LXXIX); but it is not so in the present instance, because there is no such text. Although that might be alleged on the opinion of CHANDÉSWARA and others, it cannot be affirmed conformably with that of JĪMŪTAVĀHANA and the rest; *for* texts relative to the inheritance of property left by men (CCCCXCVIII, &c.) may be adduced under the title of Succession to the separate property of women. It should not be said, that is admissible; the son's son, whose own father is dead, may claim the estate of his paternal grandmother, as *he may* the property of his paternal grandfather; and thus the remark of JĪMŪTAVĀHANA, "a son's son inherits on failure of daughters," is intended to exclude a son's son whose own father is living. In saying "a son's son shall inherit on failure of daughters," what is the import of that term? If one whose father is living be meant, terms denoting the failure of daughters are superfluous; for a married daughter has no present claim, since the father of that grandson has the sole right of inheritance: if one whose father is dead be meant, why is the failure of daughters required, since he shares equally with an unmarried daughter? Thus neither would be apposite.

To this some reply, JĪMŪTAVĀHANA does not deduce the rule of succession to the estate of a woman, from a text relative to the inheritance of property left by a man; but on some occasions he cites a text concerning this subject, in a form of illustration, to confirm *the rule otherwise deduced*: thus, the same reasoning not being equally applicable to the property of a man, and to that of a woman, it is improper to deduce rules concerning the estate of a woman from texts relative to property left by a man.

Wealth given at the time of marriage (*yautuca*) has been mentioned, what is meant by that term? Know, that it signifies any thing received at the time of marriage. From the verb *yu mix*,

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is derived *yuta*, by adding the neuter suffix of abstraction; it therefore presents the sense of mixture. Now, under the authority of the *Vēda*, an union of bride and bridegroom takes place at the time of marriage; what is then received is called *yautaca*, reading the word, as *JIMÚTAVÁHANA* does, without the *u*: but a various reading with the letter *u* occurs in some instances; and that is regularly derived from *yutu*, which again is regularly deduced from the crude verb *yu*, by subjoining the suffix *tu*.

The forms of the nuptial ceremony are eight, distinguishing the marriages called *Bráhma*, *Daiva*, *Arsha*, *Prájápatya*, *Asura*, *Gándharva*, *Rácshasa*, and *Paisácha*: these are described by *YÁJNYAWALCYA*.

CCCCXCIX.

YÁJNYAWALCYA:—In the *Bráhma* nuptials the damsel is given *by her father*, when he has decked her as elegantly as he can, to the bridegroom, whom he has invited; in the *Daiva*, to the priest employed in performing the sacrifice; in the *Arsha*, to the bridegroom, from whom he receives, *for religious purposes*, a bull and a cow:

2. When the father gives her to a suitor, saying, “perform all duties together,” the marriage is named *Cáya* (or *Prájápatya*); and a son produced by it confers purity on himself and on six descendants in a male line*:

3. An *Asura* marriage is contracted by receiving property from the bridegroom; a *Gándharva*, by reciprocal amorous agreement; a *Rácshasa*, by seizure in war; a *Paisácha*, by deceiving the damsel.

4. The four first *are approved in the case* of a priest; the *Gándharva* and *Rácshasa* marriages *are permitted*

* I complete the citation, which is imperfect in the original. T.

mitted for a soldier; the *Asura* ceremony is peculiar to mercantile and servile men; the *Paisácha* marriage is reprobated for all.

They are called *Bráhma*, and so forth, to intimate praise or blame. 'This *first* ceremony is proper for *Bráhmanas* and the rest, and therefore called *Bráhma*:' such is the meaning suggested by the legislator.

When a damsel, decked with ornaments, is given by her father to the bridegroom, whom he has invited to his own house, it is a *Bráhma* marriage, or ceremony of *Bráhmanas*, the first form of the nuptial rites: that marriage in which the damsel is given to the family priest attending a sacrifice at the time when the sacrificial fee should be given, is termed *Daiva*, or the ceremony of *Dévas*, the second form: the gift of a damsel after having received from the bridegroom one pair of kine, or with the delivery of one pair of such cattle, is named *Arsha*, or the ceremony of *P̄shis*, the third form: when a damsel is given to any person asking her in marriage, with these words pronounced by the giver, "perform all duties together with her," it is denominated *Prájápatya*, or the ceremony of *Prajápatis*; another name for it is *Cáya*, derived from *Ca*, which signifies *Prájapati*, according to dictionaries; this is the fourth form: the gift of a daughter to a bridegroom, taking from him wealth other than a pair of kine, merely at his own choice, without any authority of law, is named *Asura*, or ceremony of *Asuras*, the fifth form: when there is reciprocal connexion with mutual desire, the marriage is called *Gándharva*, or ceremony of *Gandharvas*, the sixth form: the seizure of a maiden after overcoming her father in battle, or the abduction of her by force from her house, is denominated *Rácsbasa*, or ceremony of *Racshasas*, the seventh form: the seizure of a damsel by fraud, while sleeping or intoxicated, is termed *Paisácha*, or ceremony of *Pisáchas*, the eighth form of nuptial rites. Of these modes, four, the *Bráhma*, *Daiva*, *Arsha*, and *Prájápatya*, are legal for a *Bráhmana*; the marriage styled *Gándharva*, and the seizure of a maiden in war, are peculiar to the *Cshatriya*; the *Asura* marriage is permitted for a *Vaisya* and a *Súdra*; the *Paisácha*, forbidden to them, should be practised by no person whomsoever. Such is the exposition approved by *SÚLAPÁNI*.

At present, the *Bráhma* nuptials only are practised by good men; but even the marriages called *Asura*, *Gándharva*, *Ráshasa*, and the rest, are sometimes practised by others.

“Marriage” is a rite to be performed by the bridegroom, and which completes the regenerating ceremonies; since the act of receiving *the bride* effects it, the term has been also used in *this gloss* as signifying the gift of a maiden. The nuptial rites are necessary even in the marriage named *Gándharva* and the rest.

D.

DÉVALA:—Nuptial rites are ordained in the marriage styled *Gándharva* and the rest; to this contract the nuptial fire must be made witness by men of the three classes.

The second marriage of a woman who had been already espoused by another man, is called by AT'HARVAN, a regenerating ceremony: this marriage also falls under the description of *Gándharva* rites.

Wealth received at the time of marriage in any one of such eight forms, is denominated *Yautuca*. On this MISRA remarks, that wealth received at the time of marriage, in the form called *Bráhma* and the rest, goes to the daughters.

ART. II.—*On Succession to the Separate Property of a Woman leaving no Issue.*

DI.

YÁJNYAWALCYA:—A married woman dying without issue, her property received at *Bráhma* nuptials, or even in other four unblameable forms of marriage, it goes to her husband; if she leave
issue,

issue, it descends to her daughters; but, in other forms of the nuptial ceremony, her property then received goes to her father *and mother*.

“At *Bráhma* nuptials and the rest:” here, by a strange etymology, when connecting “four” with these terms, the apposition is in the form called *bahubríhi*, joining terms which have not the same attribute; the meaning is, other four forms of marriage besides the *Bráhma* ceremony, namely the *Daiva*, *Arsha*, *Gándharva*, and *Prájápatya*. But, when connecting this part of the sentence with “property received,” the apposition is in the form called *bahubríhi*, joining terms which have a common attribute; consequently, the meaning is, property received at those marriages, as well as at *Bráhma* nuptials. But some lawyers say, even though such an etymology be established, wealth received at those four specified marriages is not presented *by the terms of the phrase*; for, admitting the order propounded by YÁJNYA-WALCYA himself, the *Asura* ceremony is included in five forms of marriage counted from the *Bráhma* ceremony; and the *Gándharva* is excluded: the apposition therefore is in the form called *bahubríhi*, joining terms which have the same attribute; as in the expression “bring the long-eared *animal*,” which denotes the bringing of one which has long ears, so, in the present instance likewise, the expression denotes “four marriages including the *Bráhma* ceremony: the apposition is not in the form called *bahubríhi*, joining terms which have not the same attribute, as in the example, “bring him who has the painted cow,” and in other instances, where the sense really presented is, ‘bring the owner of the painted cow,’ not the cow also. Consequently, the meaning is, ‘wealth received by a woman during the celebration of nuptial rites in the forms called *Bráhma*, *Daiva*, *Arsha*, and *Prájápatya*, her husband obtains, if she die without issue.’ But this contradicts the precept of MENU; for the *Gándharva* marriage is also included in his text.

DII.

MENU:—It is ordained, that the property of a woman

man married by the ceremonies called *Bráhma*, *Daiva*, *Arsha*, *Gándharva*, and *Prájápatya*, shall go to the husband, if she die without issue.

To this alleged contradiction it is answered, the particle “even” connecting the terms with something understood but not expressed, the ceremony named *Gándharva* is also included: “other forms” are the *Asura* rites and the rest, omitting the *Gándharva* marriage; for that is already included in the first hemistich by the words “or even.” It goes to her “father;” the meaning is, it goes to her father and mother, the last term being understood: so,

DIII.

MENU:—But her wealth given on the marriage called *Asura*, or on either of the *two* others, is ordained, on her death without issue, to become the property of her father and mother.

DIV.

NÁREDA:—The property of married women shall descend to their children; and legislators ordain, that, if women leave no issue, their property received at the marriage called *Bráhma*, or other four unblamed nuptials, shall go to their husbands; received at other marriages, it goes to their parents.

Here “four,” taken inclusively, is not intended to except a fifth: hence, in the marriages called *Bráhma*, *Daiva*, *Arsha*, *Gándharva*, and *Prájápatya*, the wealth of a married woman who leaves no issue goes, on her death, to her husband; in other forms of marriage, namely the *Rácsbasa*, *Asura*, and *Paisácha* nuptials, it goes to her father. This relates to wealth received by a woman at the time of her marriage. The *Retnácara*.

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“ It is not intended to except a fifth :” consequently, wealth received at four of the nuptial ceremonies, necessarily goes to the husband ; but, in the form of marriage which is different from those four, it devolves, in some instances, on the husband ; in others, on another heir. In like manner, under the precept, “ received at other marriages, it goes to their parents ;” the wealth of married women received at certain other marriages, devolves on their parents, but not what has been obtained at nuptials different from those others ; which implies an exception of other persons in those other forms of marriage.

In the marriage called *Râcshasa* and the rest, if the father, or other kinsman of the maiden, though at that time defeated in battle, (for such is the described form of this marriage,) yet following the practice of the *Daiva* ceremony, or of marriage in general, give a nuptial portion to his daughter, through natural affection or from other motives, then this rule is applicable to that case.

‘ Received by a woman at the time of her marriage :’ the supposition that the husband succeeds to all the separate property of his wife married by one of the five ceremonies called *Brâhma* and so forth, at whatever time it may have been received by her, is thus confuted ; for it is shown, that the father and mother only succeed to wealth received at the time of the marriage in the form called *Asura* and the rest, since this coincides with the text of YAMA ; and by parity of disproof it should be established, that a husband only succeeds to wealth received by *his wife* at the time of the marriage in the form called *Brâhma* and the rest. Accordingly, the accurate construction of the text of MENU is, “ her wealth given on the marriage called *Asura* ;” and in the text immediately preceding (DII), the same construction should be followed by fetching the word “ given ” from the subsequent verse. Such is the opinion of JÍMÚTAVÁHANA and the rest.

DV.

YAMA : — Wealth which is given on the marriage called *Asura*, or on either of the *two* others, goes to the parents of the woman.

RAGHUNANDANA specifies the time of marriage : ‘ the period of the nuptials is the space from the beginning to the close of the nuptial ceremony ; it commences with the oblation for increase of prosperity, and ends with a return of the salutation :’ it is so expressed in the *Vivāha tatva*. Here the implied meaning is, from the first to the last member of the ceremony : hence, if the oblation for increase of prosperity, or any other part of the rites, be not performed, there is no objection.

But others say, “ marriage ” in the text above cited (DV) is expressed in the seventh case with a general or illustrative meaning ; as in the phrase “ he goes a-begging.” Consequently, whatever is given to a damsel on account of her nuptials, is wealth given on her marriage (*yautaca*) ; such is the obvious sense : and that alone should be received by her husband at a subsequent time. Accordingly, wealth given on the day of marriage, before the oblation for increase of prosperity, is a present given on her nuptials. Does it not follow, that wealth which a kinsman returning from a distant country, but unable to attend on the day of the ceremony, gives when four or even five days are elapsed since the nuptials, would be a present given on her marriage ; but wealth previously demanded being delivered, on the very day of marriage, by a kinsman casually uninformed of it after the oblation for increase of prosperity, would not be wealth given on her marriage ; and her husband would have no right to it *after her demise* ? This is admissible ; for the expression of CHANDÉS-WARA, “ received at the time of marriage,” may be taken in a lax sense, as signifying a present given, by reason of her nuptials, on any other day whatsoever.

If a woman having no issue *male or female*, including daughter’s sons, leave a husband who has a son by another wife, which of them shall inherit her estate ? RAGHUNANDANA replies, the son by another wife is first heir ; on failure of him, the son of such a son ; in default of him again, the husband and the rest. The reason is, that her husband and others do not offer a funeral cake, in which the late proprietress can participate : that is also noticed by the commentator ; ‘ the son of another wife, and the son of such a son, have both an equal claim, because *others do not offer*, in the double set of oblations, a funeral cake which the proprietress may share.’

The superior claim of the husband and the rest, in competition with his son by another wife, is thus denied; because they do not offer, in the double set of oblations, a funeral cake, which the proprietress may share: it is not thereby shown that the son of another wife has a superior claim. And thus other reasoning must be brought for the succession of a son by another wife, in preference to the surviving husband: such, for example, as the following; since the son of any one wife is figuratively called, in a text of MENU, son of all the wives *of the same husband*, his son should also be figuratively termed grandson of all the wives.

DVI.

MENU:—*Thus*, if among all the wives of the same husband, one bring forth a male child, MENU has declared them all, by means of that son, to be mothers of male issue.

It should not be objected, that, were it so, a brother's son would alone inherit the property left by a man, although a daughter or her issue, and brothers and the rest, were living; because a nephew is figuratively called son *of all the brethren* in a text of MENU (CCLXXVI). It would be irregular to deduce the order of succession from reasoning, whilst *another* order of succession, expressly ordained by law, is found in the text of YÁJNYAWALCYA (CCCXCVIII); but, in this case, no other series of claims having been expressly ordained to bar that which is deduced from reasoning, this order of succession, consistent with the reason of the law, should be affirmed.

To all this the answer is, No; for VRĪHASPATI, declaring that no decision should be made inconsistent with the reason of the law, and the order propounded by YÁJNYAWALCYA being followed, reasoning, founded on the figurative appellation of son, cannot establish a right of succession. Accordingly, even though the son of a sister, and others also, be in effect figuratively named sons, under the text of VRĪHASPATI (DXIII), still the husband and the rest shall inherit in preference to them.

To this again lawyers reply, the son of another wife may suc-

ceed to the estate of a woman, although her husband survive, because he offers the funeral cake in the anniversary obsequies. In respect of separate property left by a woman, the benefit conferred by offering the funeral cake at anniversary obsequies, is a valid ground of inheritance; for women are not chiefly considered in the funeral cake which is offered with the double set of oblations: but in respect of property left by a man, the comparative claim of inheritance follows the comparative connexion of the funeral cake offered in the double set of oblations: it is therefore so established in this case.

Still, how can the grandson of another wife inherit the estate of a woman in preference to her husband? It should not be answered, RAGHUNANDANA only admits his claim after the husband's. That author declares the succession of the brother-in-law, on failure of sons and other heirs down to the husband. But this may be questioned; for, the right of a son, of a daughter's son, and the rest, is not declared to be founded on benefits conferred by the gift of the funeral cake in the double set of oblations; since the commentator does not consider a daughter's son and the rest as issue of the maternal grandmother, and no other special text is found: but a law concerning the succession of a son by another wife will be cited.

"It is ordained to become the property of her father and mother:" here also the mother is first heir, and the father next; for such is the order expressed in the text of MENU. There can be no association of terms, where the word "and" or other connective particle is wanting; for association cannot be introduced in the midst of successive order: the particle "or" in the text of DÉVALA (CCCCCLXXXIX) suggests the denial of association; and that is shown in the single text of BAUDHÁYANA.

DVII.

BAUDHÁYANA*:—Of an unmarried woman deceased, the brothers of the whole blood shall take the inheritance; on failure of them, it shall go to

* The text is, in other compilations, attributed to NA'REDA. T.

to the mother; or, if she be not living, to the father.

‘ That again which has been received by a woman after marriage, from the family of her father, mother, or husband, shall go to her brothers, as ordained by the following text :

DVIII.

YÁJNYAWALCYA :—If a married woman die without issue, her nearest paternal or maternal kinsmen inherit whatever her own family had given her, the perquisites allowed by her husband, and whatever she received after marriage.

“ Whatever her own family had given her ;” what was bestowed on her ‘ by her father and mother : their sons, *meaning* her ‘ brothers, are the nearest *kinsmen*, paternal or maternal, *who shall* ‘ inherit, as ordained by CÁTYÁYANA.’ JÍMÚTAVÁHANA.

DIX.

Vriddha CÁTYÁYANA :—Whatever immoveable, and of course whatever moveable, nuptial property has been given by parents to their daughter, shall always go to her brother, if she die without issue.

“ Whatever she received after marriage,” from the family of her father, mother, or husband, is called a gift subsequent. In like manner, the expression “ whatever her own family had given her,” may suggest any thing bestowed on her by her parents before marriage : however, it does not comprehend that which her brother gave her, or which she herself acquired, before marriage : an heir being therefore sought for such property, her brother should be considered as having the sole right. Since it is mentioned in the same place, JÍMÚTAVÁHANA and the rest must

of course admit the right of her brother, on failure of her husband, to inherit wealth acquired by a woman during coverture. Brothers alone shall take the perquisites, both those which are defined by VYÁSA, and those which are explained by CÁTYÁYANA. So JÍMÚTAVÁHANA and RAGHUNANDANA; 'SÚLAPÁNI also holds the same opinion. But CHANDÉSWARA says, the perquisite which was received when the damsel was given in marriage, is here determinately meant. He therefore considers the text of SANC'HA as relating to the case where the maiden dies immediately after receiving the nuptial present.

DX.

SANC'HA, after premising "may take back:"—The lover *may take back* his nuptial present on the death of his betrothed mistress.

JÍMÚTAVÁHANA does not concur in that opinion; for, such a perquisite or nuptial present being taken by her father, does not become the property of the woman. If it be said, this text relates to that wealth only which is given exclusively to the maiden as a nuptial present on the bridal procession; the answer is, there is no authority for such an inference; and it would be difficult to find an heir for the perquisites mentioned by VYÁSA and by CÁTYÁYANA. Again; it is suggested, by the expression "what was received when the damsel was given in marriage," that he who gives away the damsel takes that present.

DXI.

GÓTAMA:—First the whole brothers take the perquisite of their sister; after them (some say before them) the mother*.

This

* This text is attributed to CA'TYA'YANA by the compilers of the *Vivádār-nava śetu*, and the word father is interpolated by them: with that difference only they interpret the text as I do, in conformity with the gloss of JÍMU'TAVA'HANA. T.

This last is the opinion of other legislators : thus HELÁYUDHA. The meaning is, after the mother, that is, after her death. If the mother and father be living, it goes to those two. So the *Dīpacalīcā*.

Some lawyers thus interpret the text : the whole brothers take the heritage of their sister on failure of the mother and father, (some legislators say before them ;) that relates to other property except perquisites, and this term bears a general sense : the heritage of a maiden goes to her parents, on failure of whole brothers ; the estate of a married woman goes to her whole brother, on failure of her parents : for the sake of this double case, it is added, “ some legislators say.”

But JÍMÚTAVÁHANA explains the text, after whole brothers it goes to the mother ; for that coincides with the text of BAUDHÁYANA (DVII) : “ some say before them ;” that is an opinion of other legislators.

Consequently, the several property of a sister received at any other time but her marriage, goes to her brother ; such is his opinion. But, according to this interpretation, “ unmarried women,” in the text of BAUDHÁYANA, is unmeaning ; and the other opinion cited by GÓTAMA is most inadmissible and improper. In a gloss on the text of BAUDHÁYANA, the word ‘ damsel ’ is supposed in the *Retnācara* to signify unmarried woman. But VIJNYÁNÉSWARA, in his gloss on the text of YÁJNYAWALCYA, expounds “ kinsmen,” her husband and the rest ; a distinction, *he adds*, will be noticed from other texts : consequently, her estate goes to her kinsmen on failure of issue ; and in that case, wealth received at *Bráhma* nuptials and the rest goes to her husband ; but, in other forms of marriage, it devolves on her parents.

Thus the heir of the several sorts of property held by a woman who leaves no issue, is determined ; on failure of her father and mother, and of her brother, all her property goes to her husband, under the text of CATYÁYANA.

JÍMÚTAVÁHANA.

DXII.

CATYÁYANA :—On failure of her parents and brothers,

thers, what she received from her kinsmen as a gift descends to her husband.

The grandson of another wife shall in this case inherit, say some lawyers. But RAGHUNANDANA holds, that, if she die without issue, the husband alone has a right, under the text of DÉVALA (CCCCLXXXIX), to the property of his wife bestowed on her by him after marriage; but her brother alone shall inherit, under the text of *Vṛiddha CĀTYĀYANA* (DIX), what was given her by her father and mother. It should not be objected, whence is it deduced, that wealth given by her husband is meant in the text of DÉVALA? Since *Vṛiddha CĀTYĀYANA* ordains the succession of her brother to her property given by her father and mother, it appears that the text of DÉVALA must relate solely to wealth given by her husband, for that completes the sense; but her brother alone succeeds to that which was bestowed on her by her father and mother. Since the word "that," in the text of YĀJNYAWALKYA, denotes the female property before mentioned, kinsmen, that is, brothers, are truly entitled to such wealth only as is different from the nuptial present subsequently noticed by YĀJNYAWALKYA; does not the text of DÉVALA, concerning the succession of a husband, also relate to wealth given at the time of marriage? If this be proposed, the answer is, No? for VIJNYĀNÉSWARA, author of a commentary on the code of YĀJNYAWALKYA, explains "kinsmen," husband and the rest. This opinion of RAGHUNANDANA appears consistent with common sense.

If her husband be not living, shall or shall not her brother obtain wealth given her at the time of her marriage in the form called *Bráhma* or the like? It should not be answered, the text, which propounds the succession of her brother, must necessarily be referred to other property, for the sake of obviating the contradiction to the text of MENU and the rest (DII); and thus her brother has no claim to the wealth given at *Bráhma* nuptials or the like, because no text ordains his succession. Were it so, the brother's son, who succeeds to all property indiscriminately on failure of heirs down to the son of a husband's sister, would be heir, under the text which will be cited from VRĪHASPATI, although a brother be living; which would be inconsistent with common

common sense. To the question thus proposed, the answer is, as the husband inherits, on failure of brothers, that wealth to which brothers have a demonstrated title (DXII), so a brother inherits, on failure of the husband, wealth to which husbands have a demonstrated title. Consequently, texts showing the succession of husbands and the rest are adverse to the claims of others while they are actually living, but do not contradict the succession of others in order upon failure of them : and thus, it must be affirmed by RAGHUNANDANA, that, in default of her husband, a brother alone inherits wealth given to a woman by her husband, although the son of her sister-in-law be living. This is actually confessed by JĪMŪTAVĀHANA. Hence the text above cited (DIX) relates to wealth given by her father and the rest ; and indirectly to property given by her husband, if she survive him ; and to wealth received at the time of her marriage, if she die after her husband.

On failure of the husband and the rest, *the following text is adduced :*

DXIII.

VRĪHASPATI :—The sister of a mother, the wife of a maternal or of a paternal uncle, the sister of a father, the mother of a wife, and the wife of an elder brother, are declared equal to a mother.

2. If they leave no issue of their body, nor the son of another wife of the husband, nor the son of a daughter, nor the son's son of another wife, the sons of their sisters and so forth shall therefore inherit their property.

“ Issue of their body ;” son, daughter, and the rest, before mentioned. “ Son ;” the offspring of another wife of the husband. “ Son of a daughter ;” the daughter's son of another wife, who is the subject of a text above cited (CCCXCV). “ Nor the son of him ;” the son of another wife's son ; but the daughter's son of another wife of the husband is debarred from succession,

succession, because he confers no benefits. Consequently, the son and son's son of another wife inherit before the sister's son and other six heirs; and the daughter's son inherits before the husband, as his own daughter's son, and as offspring of a *Bráhmání* daughter; but after him, according to JÍMÚTAVAHANA and the rest, as above mentioned.

But others *thus interpret the text*: a son begotten in lawful wedlock, a daughter's son (and of course a daughter); his son, that is, the son of a son, or grandson in the male line; and the husband and other heirs ordained by express texts, who are here understood from the connexion of the particle "nor;" on failure of all these, *we say*, a sister's son and the rest shall inherit in the order which will be mentioned, although the brother, the husband's father and the rest, and the son of another wife of the husband and other claimants be living. Neither is the term "begotten in lawful wedlock" superfluous as an epithet of son; for the son of another wife, and others, who are figuratively called sons, must be excepted. Nor should it be objected as a fault, that "son," to which the epithet is referred, becomes superfluous. That form of expression occurs in other texts (*for example*, "A son begotten in lawful wedlock, and one begotten on the wife by a kinsman, both share the father's wealth"), and it excludes a remoter descendant of the body. Nor is it inconsistent with common sense that the son-in-law should inherit, although the son of another wife of the husband be living; for it must be borne, like the succession of a son-in-law, although the brother or the husband's father be living. As the husband of a daughter is by VRĪHASPATI figuratively called son, so is the son of another wife metaphorically called so by MENU. The *younger* brothers of a husband, and the rest, as well as the son of another wife, being considered as sons, who shall first inherit? On this question, if it be said, the son of another wife ought to inherit first, in right of superior benefits conferred by him, because he gives three principal funeral cakes which should be offered by the son of a proprietor; the answer is, that is admissible; but he cannot claim succession before the husband, since he derives his title through him. It should not be objected, that the husband's brother and the rest, deriving their title through the father of the husband, would not inherit while the father-in-law is living. The
succession

succession of the husband's father and the rest is not deduced from any other text. Nor should it be argued, that he would have a prior title of inheritance, because he has a right to perform the obsequies before the husband. Such a maxim has been obviated, since the title of a sister's son and the rest to take the heritage has been propounded, even though the father-in-law, or other person qualified as a *sapinda* to perform the obsequies, be living. The husband's brother and the rest, as well as his son by another wife, being equally considered as sons, there is no authority to prove that one should inherit before the husband, the rest after him. Nor should it be argued, that the son of another wife being figuratively called son, when treating of those who are secondarily so called, it is therefore acknowledged that he redeems *his stepmother* from the hell named *put*; not *so*, these sons of a sister, and the rest, who are figuratively called sons, merely that they may take the heritage; and thus they are not equal to a son of another wife. The husband confers many more benefits than he. As for the remark, that her own son is superior to all others, solely because he delivers her from the hell called *put*, that is futile; for, were it so, her own son and the child of another wife would have equal claims *to her inheritance*. If it be said, her son has precedence, because he performs both offices of redeeming *her father and husband* from the hell called *put*, and thereby benefits the family of her own father and that of her husband; the answer is, since the son of her sister married to the same husband with herself also performs both offices, he would have an equal claim with her own son, and would have precedence above the issue of any other wife of the husband; and if her own son be acknowledged superior to both those who discharge the debt of offering a funeral cake, to be shared by her in the double set of oblations, it cannot be affirmed that his title is superior, solely because he delivers from the hell called *put*. Again; whatever claim the son of another wife may have, it is certainly true that no argument exists to prove that the grandson of another wife inherits before the husband. These authors so expound the law.

We resume the subject. Have the sons of sisters and the rest a co-ordinate title, or a successive one? Not the first; for, association should not be assumed if successive order be possible; and the sons of a sister, and others, of whom the designations are incompatible,

incompatible, ought not to be associated. They should therefore succeed in order as enumerated. Accordingly the son of a sister may be the first heir. It should not be objected, that the reason of the law prevents this, because the succession of a son-in-law, while a brother of the husband exists, is contrary to rule. Since a son-in-law may regularly succeed, although an elder *brother of the husband* be living, he may also regularly succeed in preference to a younger *brother of the husband*; but if the text be revered, the order of succession stated therein must also be respected. Some authors so expound the law. But that is wrong; for, it is improper that one who confers less benefits should inherit, while another who confers greater benefits, other than that which is afforded to the woman herself by means of obsequies, is living.

Since her husband's elder brother performs obsequies as a *sapinda*, and the younger brother of the husband confers equal benefits, a son-in-law and the rest would not inherit while either of these exist: this should not be affirmed. The younger brother of a husband also presenting the funeral cake as a *sapinda*, he is again mentioned as a son *by fiction of law*, to show that his oblation of the funeral cake is indispensable: and thus it follows, that the husband of a daughter, and others, mentioned in a single text as heirs of a mother-in-law who leaves no issue, and so forth, must necessarily offer the funeral cake. Consequently, the necessity of conferring benefits on the woman herself is the sole cause why a son-in-law and the rest rank above the elder brother of a husband. It is therefore demonstrably just, that a son-in-law and the rest should inherit, although the elder brother of the husband and other heirs be living.

But others hold, that a son-in-law does not inherit if the elder brother of the husband be living, for he is not a kinsman connected by the funeral cake; but *he inherits* on failure of the husband and other heirs who are expressly ordained by law, the succession of those who confer benefits being deduced from reasoning. Among *sapindus*, the younger brother of the husband has the first claim; next, the sons of her husband's elder and younger brothers; on failure of them, the son of the husband's sister; after him, in default of kinsmen within the degree of *sapinda*, or of *samānōdaca*, including fourteen persons ascending and descending, the right of her father's kinsmen being *in that case*

case celebrated, the sons of her brother or sister inherit ; next, on failure of kindred in the father's or mother's families, the husband of a daughter ; and, lastly, the highest of twice-born men.

That is denied ; for, in the line of *śapindas*, there is no proof that the husband's younger brother shall inherit first, although his father, who is nearer of kin, be living ; nor, in the line of her father's kindred, that the sons of her brother or of her sister shall first inherit. If it be said they are preferable heirs, because they are her sons *by fiction of law* ; it must be remembered, that all sons, *secondarily so called*, take the heritage immediately after a true son. Hence the method approved by JĪMŪTAVĀHANA should be followed. It may be thus stated : the order of succession corresponds with the degree of benefit conferred ; first, the husband's younger brother inherits, because he offers a funeral cake to her and to her husband, and presents oblations to three persons to whom cakes were to be offered by her husband, and to two persons to whom they would have been offered by her son. After him, the sons of her husband's younger and elder brothers inherit together ; because they offer the funeral cake to her and to her husband, to two persons to whom oblations would have been presented by her son, and to two persons to whom funeral cakes were to be offered by her husband. On failure of those, the son of her sister *inherits*, because he offers the funeral cake to her, and to three persons, the maternal grandfather and the rest, to whom oblations would have been presented by her son. After him, the son of her husband's sister succeeds, because he offers the funeral cake to her, and to three persons, her father-in-law and the rest, to whom oblations were to be presented by her husband. Since the husband has a weaker claim than the son, it must be inferred, that he who performs rites incumbent on her husband, has a weaker claim than he who fulfils duties incumbent on her son : this order of succession is therefore right. So JĪMŪTAVĀHANA and RAGHUNANDANA.

But the son of her husband's sister also performs rites incumbent on her son, for he performs the *śrādd'ha* for the paternal grandfather and other ancestors of her son, and of his father. Yet the son of her husband's sister, performing rites incumbent on both, has not a stronger claim than he who merely performs those which were incumbent on her son. It should not be answered,

answered, that, according to RAGHUNANDANA, her sister's son has a stronger claim than the son of her husband's sister, because he satisfies six ancestors of her son, including the maternal grandmother and the rest, while the other satisfies four ancestors of her son, the paternal grandfather and grandmother and the rest. The son of her husband's sister is superior, because he satisfies six ancestors of her husband, namely his father and the rest, and his mother and so forth. Nor should it be argued, *on the other hand*, that his claim is completely established in right of his satisfying those six persons. He who contents four persons who ought to be satisfied by her son, is inferior to him who contents six persons who ought to be satisfied by the same *.

As for the observation, that a sister's son performing rites incumbent on a brother has a superior claim, because a brother has a stronger title under a text above cited (CCCCXCIII 2), that is not apposite in the case of wealth received at the time of marriage in the form called *Bráhma* and so forth; for in such instances the husband has the stronger title.

Since the line of maternal ancestors is not chiefly considered, the son of the husband's sister, offering the funeral cake to the son's paternal ancestors, ought to be first heir, under the rule, that, on the competition of chief and subordinate *claimants*, the office devolves on the chief person. Again; the son of the husband's sister also confers favours on the husband, who is one of two persons constituting one body. This also may be objected.

On failure of him, the brother's son inherits *the separate property of the woman*, because he offers two funeral cakes, which would have been presented by her son, *one* to the maternal grandfather, the other to the maternal great-grandfather, and because he also offers the funeral cake to the woman herself. In default of him, the husband of her daughter *inherits*, because he offers her own funeral cake. JÍMÚTAVÁHANA adds, 'on failure of these six again, it must be understood, that her husband's father, and elder brother, and so forth, inherit her property, the succession devolving on the nearest kinsman related by the funeral cake.' Consequently, on failure of heirs, including the husband of her daughter, the succession devolves on *sapindas*; and the father of her

* I suspect an error. As the text stands, the argument is inconsistent. T.

her husband is first heir to her estate. Others say, the grandson of another wife of her husband has a preferable claim, and next the great-grandson of another wife, because they are heirs of her husband. Immediately after her father-in-law, the elder brother of her husband *inherits*; next, her father-in-law's great-grandson in the male line, because he is the nearest *sapinda*: after him, the paternal grandfather of her husband, or his issue; next, the paternal great-grandfather of her husband, or his offspring; and so forth, including fourteen persons ascending and descending: after these, her kindred on her father's side, as far as the tenth person; after them, the family of her mother; and, lastly, the king *takes the estate*, except the property of a *Bráhmaṇi* woman. This brief exposition *may suffice*.

The ground of this *order of succession* is the performance of obsequies; for it is shown, in the case of property left by a man, that heirs succeed in right of benefits conferred. On this subject,

DXIV.

The *Vishnu purána*:—A son, a son's son, the son of a grandson, or like them a brother or his offspring, or a *sapinda* or his issue, become entitled, O king! to perform *funeral* rites:

2. On failure of all these, the offspring of a *samánódaca*; or, *after them*, kinsmen on the mother's side, connected by the funeral cake, or by oblations of water.
3. But if both families be extinct, the rites, O king! must be performed by women; or the obsequies for the deceased must be celebrated by intimate companions.
4. Let the king cause obsequies to be performed for him who leaves no kinsmen nor wealth.

The same:—By the *sapindas* and *samánódacas* of the father

father and mother, by intimate companions, or by the king, who takes an escheat,

6. The first rites must be performed; but the last rites shall only be celebrated by sons and the rest*.

First, a brother; next, his offspring: the apposition of the terms is in the sense of association; 'a brother with his offspring:' and the descendants of a brother perform obsequies according to the degree of proximity. Next, a *sapinda*, namely a father and the rest, and their issue, including females, *that is*, the wife of a son and so forth. After them, the offspring of a *samānōdaca*, as mentioned in a text of law, "the relation of the *samānōdacas*, or those connected by an equal oblation of water, ceases with the fourteenth person." Next, *sapindas* and *samānōdacas* on the mother's side. If both families, that of the father, and that of the mother, be extinct, obsequies shall be performed by women, meaning daughters of the family and the rest; on failure of all these, by intimate companions, that is, by friends; in default of them, by the king; *but* since he cannot officiate in person, he must cause obsequies to be performed by the intervention of some man equal in class.

"The last rites," subsequent to the first annual obsequies, that is, *other* annual *śrādd'has* and so forth. In like manner, women also requiring obsequies, the right of performing for them ceremonies relative to another world should follow the same order. But in this case the terms "a brother or his offspring," are not apposite; for these are not *sapindas* of a married woman: the order must therefore be understood with the omission of them. On failure of kindred within the degree of a *samānōdaca*, the father and the rest (meaning his kinsmen) *perform obsequies*, under the text *above cited* (DXIV 5). So RAGHUNANDANA; but according to others, because reasoning shows the kindred of her father to be more venerable than those of her mother. On failure of

* The first funeral ceremony is the cremation of the corpse; the middle rites consist in gathering the ashes, and performing the obsequies for a person recently deceased: these extend to the first annual *śrādd'ha*: the last rites are the monthly, annual, and other obsequies for ancestors long since dead. T.

of them, the kindred of the mother, and the most exalted or twice-born men, are qualified to perform obsequies for the deceased, under the text, "on failure of them, the highest twice-born man." They inherit the estate because they confer benefits.

Although women, included among these *remote heirs*, may perform funeral rites for the deceased, under the text of the *Viṣṇu purāṇa*, "on the anniversary of decease, the last rites may be performed even by women;" they do not share the property, for a text expresses, "distribute not wealth among women, ignorant men, and such as neglect their duties."

Others hold, that the claim of a sister's son and the rest follows immediately after that of the woman's own issue, because they are declared equal to a son: their claim, as before, *is regulated* by the degree in which they perform rites incumbent on a son; else there could be no certainty when these persons, not mentioned in the *Viṣṇu purāṇa*, would have a right to perform funeral rites.

RAGHUNANDANA affirms, that, on failure of heirs, including kinsmen bearing the same family name, the father is first qualified to perform the funeral rites for a woman; on failure of him, her brother; next, the son of her own sister, of her husband's sister, of her brother, and, lastly, the husband of her daughter, under the text of *ŚĀTĀTAPA*: *after these*, the maternal uncle, and the pupil of her husband, claim that right; and, last of all, other kindred of her father.

DXV.

ŚĀTĀTAPA:—A maternal uncle *shall perform the obsequies* of his sister's son, and a sister's son the obsequies of his maternal uncle; *a son-in-law, the funeral rites* of his father-in-law; *a pupil, those* of his spiritual teacher; *a grandson, the obsequies* of his maternal grandfather.

2. The funeral cake must be offered to their wives and sisters, to their mothers and fathers: this is a rule settled by lawgivers versed in holy writ.

According to his opinion, a similar order should be understood in succession to property. Such is the inheritance of separate wealth left by a married woman: however, land given by her husband does not devolve on the heirs of her separate property, but on those of her husband's, under the text above cited (CCCCLXXVII 2); for this follows of course, since the precept would be unmeaning, were the heirs of the woman intended: the legal heirs of her husband must therefore be understood. This text is expounded by authors as relating to an estate devolving on a wife *by failure of male issue*. Wealth possessed as property in right of relation or affinity, is heritage in the acceptation of the word (*dāya*): now it is determinately connected with the condition, 'after the title of a former owner has expired:' hence "a gift (*dāya*) or heritage *received* from her husband" in effect signifies wealth received in right of her connexion with him. While he lives, it must be preserved *with frugality*, not dissipated without his assent; but after his death she has independent power over it: however, though she have such power, her enjoyment of it is alone authorized, not lavish expence at pleasure. Such is the virtual sense; and this relates only to immoveable property, according to the *Retnācara*. By the expression in the subsequent verse, "strictly obedient to her spiritual parents," it is suggested that the husband of the woman is dead; from the term "childless" it follows, that she is become owner of the estate: and this text is propounded by CĀ-*TYĀYANA* incidentally. In a former precept (CCCCLXXV 3) a woman had been declared to have independent power over her own separate property, even though it should consist of lands and houses: recollecting the other sorts of wealth held by a woman as her property, the legislator subjoins this text to regulate her dependence in respect of such wealth.

Must not this text relate to the peculiar property of women, since it is placed under that title? It should not be answered, were it so, the word "childless" would be unmeaning. It is connected with the terms, "strictly obedient to her spiritual parents:" thus the meaning is, if a son be living, she is subject to his control; on failure of him, she must strictly obey her spiritual parent. To the doubt thus proposed the answer is, No; for a question requiring solution shall prevail before the title under consideration,

consideration, in a matter which bears the stamp of scripture *. Thus the independent power of a woman over her peculiar property technically so called, which she possesses as her own, having been propounded, a question arises, what is the rule in respect of other sorts of property held by her as her own? In fact it must be affirmed, that the legislator, speaking of lands and houses (CCCCLXXV 3), does intend other immoveables besides such as her husband gave her; else it would contradict NÁREDA (CCCCLXXVI). Again; a question arises, whether the rule be the same in respect of immoveables given by her husband, and in regard to other sorts of property held by a woman as owner thereof? In answer to the question, what is the rule respecting immoveables given by her husband, and other sorts of property possessed by her? this text is cited; and the gift or heritage (*dāya*) of her husband there signifies his wealth, that is, the property of the wife formerly belonging to him. It follows, from the epithet “*received* from her husband,” that she has independent power over wealth devolving on her from her father and the rest by failure of nearer heirs.

But MISRA holds, that she is also subject to controul in respect of immoveable property descending to her from her husband through the intervention of her son, in other words, property of a son devolving on his mother. JÍMÚTAVAHANA and the rest affirm, that a woman is subject to controul in respect of wealth any-how devolving on her alone. Thus “childless,” in the text above cited, supposes property descending to her by failure of nearer heirs. Consequently, immoveables, even though given by her husband, shall be taken by *his* heirs only.

A husband having independent power, by the text of CÁTÝÁ-YANA (CCCCLXX), over wealth acquired by his wife during coverture, and a father being also owner of wealth earned by his unmarried daughter, (for the word son, in the text of MENU, Book III, Ch. I, v. LII 1, signifies both son and daughter, since it is not determinately restricted to the *masculine* gender;) what is the rule concerning property acquired by a widow? It should not be answered, her brother is sole heir, because none can con-

* And therefore a text should be so expounded as to satisfy doubts which may arise, instead of adhering strictly to the subject of the title under which the text is placed. T.

test his claim, since her husband, the *only* obstacle to his succession, is dead. The brother is pronounced heir to that wealth only which was given by her parents (DIX). To the question thus proposed, the answer is, No; for it has been already mentioned, that the husband, mother, and brother are, in every instance, heirs on failure of opponents.

Again; according to the opinion of those who contend that the legal heirs of the daughter succeed, on her demise, to the estate of her father which had devolved on her, wealth descending to a woman in default of nearer heirs is her peculiar property. Even in that case, the rule of decision is this: the mention of the six-fold property of women, established by authors to be an exception of fewer distinctions, relates to property over which they universally have independent power by the tenor of the precept. For the estate of her father, though devolving on his daughter after her marriage, becomes the property of her husband, since he is declared by the text above cited (Book III, Ch. I, v. LII 1) to have dominion over *all* her property excepting the six sorts specified: but that precept does not relate to the peculiar possessions of a woman, since it is opposed by a separate text. Thus wealth received a few days before marriage is not the peculiar property of a woman in the technical acceptation of the term, although she have independent power over it. In like manner, since the husband has in some instances dominion over wealth acquired by his wife, a widow has not universally an untroubled power over her own acquisitions in general, although she sometimes have such power. Here again, although the husband have a title in the wealth acquired by his wife during coverture, his ownership is subject to the controul of his wife; after his death, it shall be enjoyed by her alone; but, if she die *before him*, it shall be taken by the legal heirs of her husband: the regular claimants of a woman's separate property have no right in this instance. If her husband die first, her *acquired* wealth becomes the sole property of this woman, who earned it; in that case, it shall be taken by legal heirs of her peculiar effects: but if the wife die first, her wealth becomes the sole property of her husband, and shall therefore be taken, *after his demise*, by his legal heirs. If partition be made during the life of the married pair, such wealth shall be divided between them, according to the opinion of those

who contend for partition between husband and wife : the sons obtain no share of it, since no text ordains *their participation*. This should be admitted, because legislators have delivered no other rule concerning wealth acquired by women, because the husband is declared to have dominion over it, and because the father and son are observed to share the wealth which is acquired by the son. Thus some authors expound the law.

But, according to JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, the wife is sole owner of wealth acquired by her even during coverture ; yet she has not independent power over it so long as her husband lives : *for* the negative in the text of MENU (Book III, Ch. I, v. LII 1) conveys the sense of imperfection. Consequently, they have no wealth exclusively their own ; and the imperfection *of their property* consists in the want of untroubled power. It must be therefore understood, that the legal heirs of a woman's peculiar property succeed also to this wealth. Although it be suggested that the same should be likewise affirmed in respect of her father's estate devolving on a daughter *by failure of nearer heirs*, still we do not investigate this *claim*, because it is asserted by JÍMÚTAVÁHANA and RAGHUNANDANA, that the legal heir of her father succeeds to that estate.

A daughter may at pleasure give away to any person whomsoever the exclusive property of her mother, which has devolved on her ; after her death, the daughter's son-in-law and the rest shall obtain that *which has not been aliened*. It should not be argued, that a daughter is only permitted to enjoy for life the peculiar property of a woman, *which she has inherited*, like the estate left by a man *to which she has succeeded*. That has not been asserted by JÍMÚTAVÁHANA ; and no reasoning supports it.

THE
LAW
OF
THE
STATE
OF
NEW
YORK

IN SENATE,
January 1, 1892.

REPORT
OF THE
COMMISSIONERS OF THE
LAND OFFICE,
IN RESPONSE TO A
RESOLUTION PASSED
BY THE SENATE,
MAY 1, 1891.

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J. B. LIPPINCOTT & CO.,
PRINTERS,
1892.

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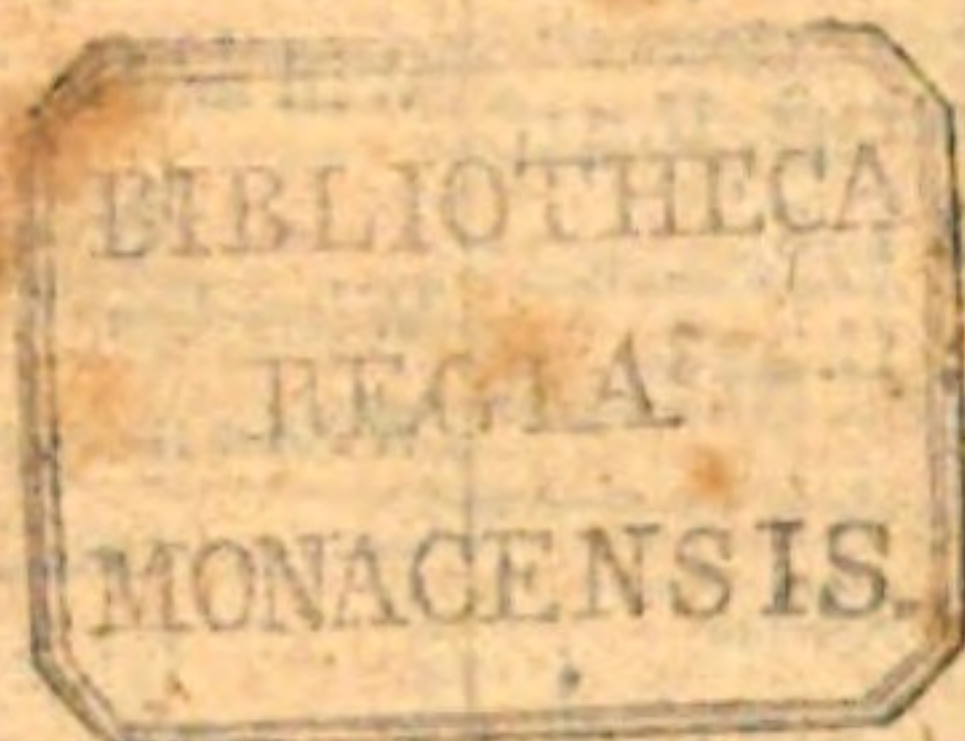
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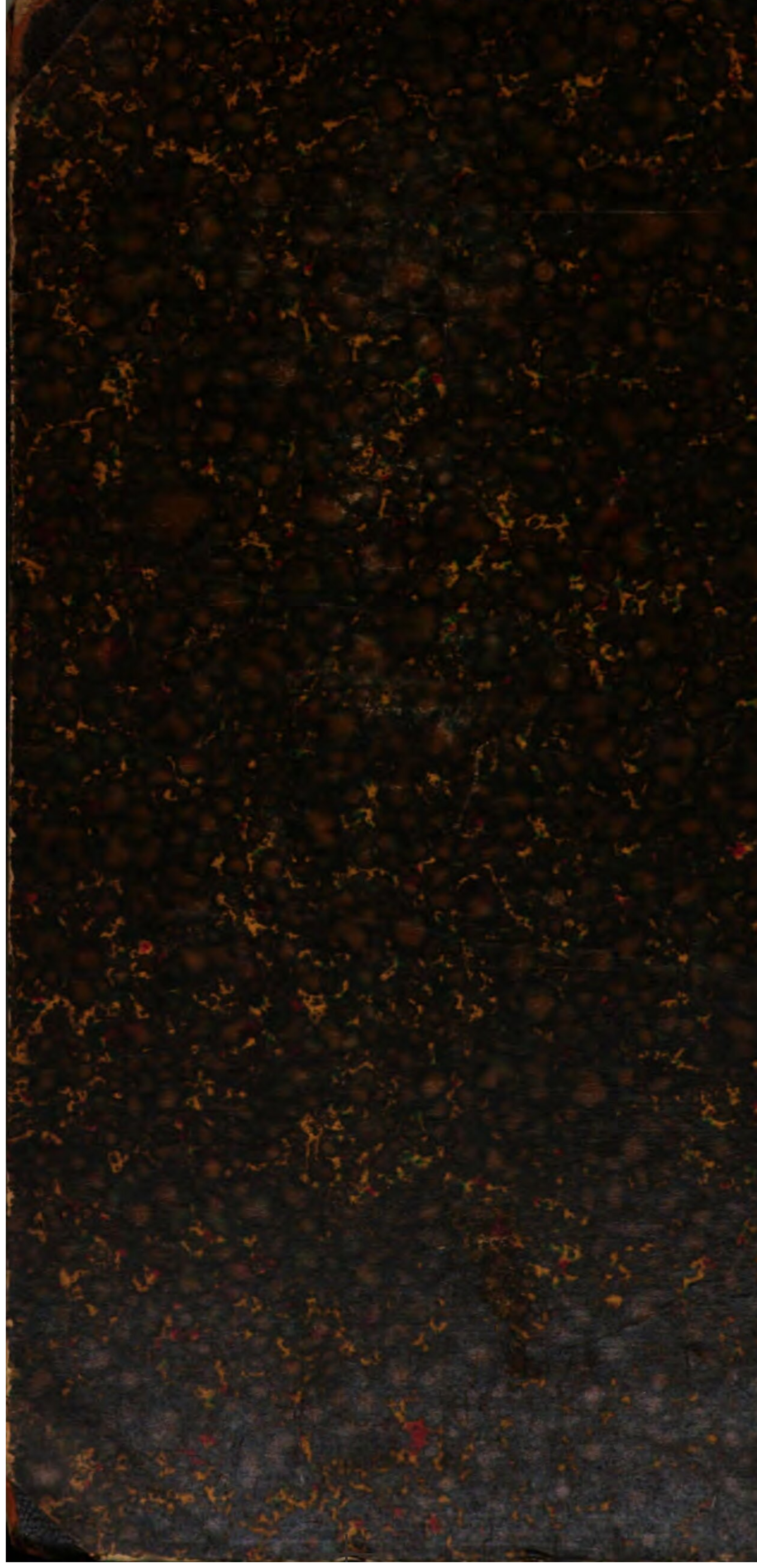
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THE END.





Jagannātha

A digest of Hindu law, on contracts and successions

Bd.: 3

Calcutta [u.a.] 1801

A.or. 4335-3

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